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TRAPPED IN DOMESTIC VIOLENCE: THE IMPACT OF UNITED STATES IMMIGRATION LAWS ON BATTERED IMMIGRANT WOMEN

I. INTRODUCTION

The devastating effects of domestic violence affect our entire society indiscriminately.¹ Domestic violence is blind to distinctions based on class, race, ethnic, religious, and economic lines. However, the consequences are particularly overwhelming when the victim of abuse is an immigrant woman with conditional resident status.² In addition to the fears that all domestic violence victims face, battered immigrant women live with fears that are unique to their situation — fear of deportation, a general distrust of authorities, and language and cultural barriers. All of these factors combine to increase their sense of isolation and create barriers that appear insurmountable, essentially trapping these women in violent relationships.

Part II of this Note explores the particular difficulties faced by battered immigrant women and why they are in need of special protection. Part III provides a brief historical overview of the relevant statutory and regulatory schemes and how the legislative framework has evolved to address the specific problems faced by immigrant victims of domestic violence. It will assess the current framework that consists of the Immigration and Marriage Fraud Amendments, the Immigration Act of 1990, the Violence Against Women Act 1994 and the relevant Immigration and Naturalization Services (“INS”) regulations, all specifically enacted to ameliorate the adverse impact of immigration laws on domestic violence victims and to extend their legal protection. Part IV will discuss the problems that remain due to obstacles created by conflicting laws that undermine the current framework. Part V will assess recent developments in light of the passage of the Anti-Terrorism and Effective Death Penalty Act of 1996,³ the Per-

¹ An estimated four to six million women in the United States are battered by their husbands or parents annually. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 809 (1993). Domestic violence is the single largest cause of injury to women in the United States. See Barbara J. Hart, *State Codes on Domestic Violence: Analysis, Commentary and Recommendations*, 43 (4) JUV. & FAM. CT. J. 58 (1992).

² This Note will focus on the experience and options of battered immigrant women. This is not to say that only women suffer from domestic violence. This Note will refer to batterers as men and victims as women because the overwhelming majority of cases involve men abusing women. Approximately 95% of domestic violence victims are women. See BUREAU OF JUSTICE STATISTICS; REPORT TO THE NATION ON CRIME AND JUSTICE: THE DATA (1993).

³ Pub. L. No. 104-132, 110 Stat. 1213 (1996).

sonal Responsibility and Work Opportunity Reconciliation Act of 1996⁴ and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,⁵ and their impact on battered immigrant women. Finally, this Note will propose some ways to address the remaining problems through a comprehensive process involving regulatory, legislative, and community based responses, to ensure greater protection for immigrant victims of domestic violence.

II. BARRIERS FACED BY BATTERED IMMIGRANT WOMEN

Cultural barriers present a major obstacle to a battered immigrant woman, often preventing her from seeking help. A battered immigrant woman's cultural and religious orientation may be one that instills a tolerance for domestic violence.⁶ A battered immigrant woman may have been raised in a society where it is acceptable for a husband to beat his wife and expect that she will endure it. For example, in many Asian cultures, Confucianism requires women to obey their husbands,⁷ while Buddhist women are prone to accept victimization as their fate.⁸ A Korean saying considers "women and dried fish . . . alike. You have to beat them at least once a day to keep them good."⁹ According to Islamic law and the Koran, "men are in charge of women because Allah has made the one of them to excel the other and because they (the men) spend of their property for the support of women."¹⁰ The Koran's Sura IV. 34 further indicates that "good women are obedient" and instructs men on what steps to take in dealing with rebellious women: "admonish them, banish them to beds apart and scourge them."¹¹

Many cultures have different definitions of family and community. In some cultures, violence in a marriage is seen as a "private" problem.¹² Discussion of such private affairs among family members, let alone with strangers humiliates the family and is a source of shame and family disgrace.¹³ Even if a woman does not willingly accept the abuse, she may not want to jeopardize her husband's standing in the community because of the importance placed on social

⁴ Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁵ Pub. L. No. 104-208, 1996 H.R. 3610, Slip Copy (1996).

⁶ See Maxine Yi Hwa Lee, *A Life Preserver for Battered Immigrant Women: The 1990 Amendments to the Immigration Marriage Fraud Amendments*, 41 BUFF. L. REV. 779, 782-83 (1993).

⁷ See *id.* at 783.

⁸ See Jorge Banales, *Abuse Among Immigrants: As Their Numbers Grow So Does the Need for Services*, WASH. POST, Oct. 16, 1990, at E5.

⁹ Lee, *supra* note 6, at 783.

¹⁰ Banales, *supra* note 8, at E5.

¹¹ *Id.*

¹² See Sandra D. Pressman, *The Legal Issues Confronting Conditional Resident Aliens Who Are Victims of Domestic Violence: Past, Present, and Future Perspectives*, 6 MD. J. CONTEMP. LEGAL ISSUES 129, 135 (1994).

¹³ See *id.* at 135; Lee, *supra* note 6, at 783-84.

status.¹⁴ Furthermore, an immigrant woman faces the possibility of ending her marriage and accepting the social consequences attendant to divorce.¹⁵ Divorce is particularly onerous in traditional families and communities that reject divorced women or women who have left their husbands.¹⁶ Thus, cultural mores often prevent women from ending their abusive relationships.

Furthermore, battered immigrant women live with a fear that is unique to their situation — fear of deportation. This is the single largest concern for battered immigrant women seeking to leave an abusive relationship.¹⁷ For some women who have fled persecution in their home country, deportation means torture, jail, or death.¹⁸ For others, it means a return to a life of extreme poverty, disease, and few or no opportunities.¹⁹ Fear of deportation does not imply that there was any duplicity in the acquisition of conditional status or that a woman entered into a fraudulent marriage to remain in the United States.²⁰ Many immigrant women are undocumented despite the fact that they are in valid marriages to United States citizens or permanent residents. Fear of deportation is, in fact, a genuine concern which prevents battered immigrant women from leaving abusive marriages regardless of whether they have obtained legal immigration status. Many immigrant women are simply unaware that there are legal avenues available to stop the violence which will not affect their immigration status. This ignorance and unfamiliarity is largely due to incorrect information provided to battered women by their abusers. Large numbers of immigrant women are trapped in violent homes by abusive husbands who use the promise of legal status or the threat of deportation as a means to exert power and to maintain control over their wives.²¹ Immigrant women often fear that any sort of contact with governmental authority will expose their presence in the country and result in deportation.²² As a result, many women choose to stay in abusive relationships rather than face deportation.²³

¹⁴ See NAT'L IMMIGR. PROJECT OF THE NAT'L LAW. GUILD, *NEW IMMIGRATION RELIEF UNDER THE VIOLENCE AGAINST WOMEN ACT FOR WOMEN AND CHILDREN SUFFERING ABUSE* 16 (1995).

¹⁵ See Michelle J. Anderson, *A License To Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L. J. 4 1401, 1420 (1993).

¹⁶ See *id.* at 1421.

¹⁷ See NAT'L IMMIGR. PROJECT OF THE NAT'L GUILD, *supra* note 14, at 15.

¹⁸ See Deborah Weissman, *Protecting The Battered Immigrant Woman*, 68 FLA. B. J. 81, 82 (1994).

¹⁹ See *id.*

²⁰ See Anderson, *supra* note 15 at 1421 n.127.

²¹ See Pressman, *supra* note 12, at 135. One study of undocumented immigrants found that for 64% of Latinas and 57% of Filipinas, the primary barrier to seeking help is fear of deportation. See Anderson, *supra* note 15, at 1421 n.127.

²² Often, this fear of deportation deters a battered woman from taking action to protect herself, such as filing for a civil protection order, filing criminal charges, or simply calling the police. See H.R. REP. NO. 395, 103d Cong., 1st Sess. 26 (1993).

²³ See *id.*

Like most victims of domestic violence, battered immigrant women may hide the problem because of fear, shame and denial. Battered immigrant women unfamiliar with the ways of a new country may not have any friends or family, and may simply not know what to do. Many immigrant women may not even realize that domestic violence is against the law in this country. Battered immigrant women may often be afraid to call the police because of a basic distrust of law enforcement officials and government authorities.²⁴ If a battered immigrant woman is from a country that views the police as repressive, it is difficult for her to have anything but terror of the police.²⁵ Her experience with the legal system in her native country may make her reluctant to turn to the judicial system for help. In countries where the judiciary is an arm of a repressive government and does not function independently, those who prevail in court are the people with the most money or the strongest ties to the government.²⁶ Against this background, battered immigrant women may find it difficult to believe that the legal system will protect or help them.

Battered immigrant women are often unfamiliar with ways to access the system or community resources. Seeking help from legal services or temporary safety at shelters is daunting for immigrant women who face significant language barriers.²⁷ Most shelters do not have bilingual or multilingual staff or volunteers and therefore cannot accommodate non-English speaking women.²⁸ Even if interpreters are available, many immigrant women may be reluctant to speak to an interpreter for fear of exposure,²⁹ lack of confidentiality, and fear that their whereabouts may be disclosed to abusive spouses.³⁰ Shelters may also be reluctant to provide assistance because immigrant women are less likely to have an income and may not be eligible for public benefits.³¹ Many shelters prefer to offer the limited numbers of spots to women who can theoretically make better use of all shelter services.³² Some shelters and legal services may even be unable to accept undocumented women because of government imposed funding restrictions.³³

²⁴ See Weissman, *supra* note 18, at 81.

²⁵ See *id.*

²⁶ See NAT'L IMMIGR. PROJECT OF THE NAT'L LAW. GUILD, *supra* note 14, at 14.

²⁷ See Deena Jang, *Triple Jeopardy: The Plight of Battered Immigrant and Refugee Women*, 19 IMMIGR. NEWSL. 6, 8 (1990).

²⁸ See *id.* at 8.

²⁹ Fears of exposure have been heightened by the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which requires federally funded agencies to notify the INS of any undocumented immigrants by furnishing the INS with the name, address and any identifying information on any individual who is unlawfully in the United States. See Pub. L. No. 104-193, 110 Stat. 2105, 2266-67 (1996).

³⁰ See Pressman, *supra* note 12, at 136.

³¹ See *id.*

³² See Klein & Orloff, *supra* note 1, at 1022.

³³ See Jang, *supra* note 27, at 8; see also DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: ASSERTING THE RIGHTS OF BATTERED WOMEN, Appendix IX-27, IX-28. (Deanna Jang et al. eds., 1991).

Economic difficulties also make it difficult for immigrant women to leave abusive marriages. Battered immigrant women are often unemployed and have little social mobility. Many come to the United States with little or no independent financial resources.³⁴ These women are often economically dependent on their husbands, lacking education or the marketable skills necessary to find higher paying employment which would enable them to live independently.³⁵ This economic dependence is reinforced by the impact of immigration laws concerning employer sanctions and hiring practices.³⁶ If the woman is undocumented she will not have authorization to work, and will be subject to deportation.³⁷ As a result many women are forced to work in restaurants, garment factories, and other businesses that typically pay below minimum wage and provide no benefits.³⁸ The lack of English further limits their employment opportunities, forcing them to remain within their ethnic community.³⁹ Any decision to leave the community and seek shelter would thus result in an inability to support herself and her children.⁴⁰ Without any means of achieving financial independence, escape from an abusive marriage will leave battered immigrant women and their children helpless and poverty stricken.⁴¹

Cultural barriers, dependence on abusive husbands, fear of deportation, and language barriers all create a sense of isolation which leave battered immigrant women particularly vulnerable in situations of domestic violence. These factors create an environment in which immigrant women feel alone and powerless to escape abuse. Given the particular vulnerability and the additional difficulties that immigrant women face, a comprehensive statutory and regulatory framework is necessary to address the problems that are specific to battered immigrant women.⁴²

III. THE STATUTORY AND REGULATORY FRAMEWORK

A. *Immigration Marriage Fraud Amendments of 1986*

United States immigration laws have presented the greatest obstacles to bat-

³⁴ See Anderson, *supra* note 15, at 1424.

³⁵ See Lee, *supra* note 6, at 785.

³⁶ See NAT. IMMIGR. PROJECT, *supra* note 14, at 16.

³⁷ See *id.*

³⁸ See *id.* See also Lee, *supra* note 6, at 785.

³⁹ See NAT'L IMMIGR. PROJECT, *supra* note 14, at 16.

⁴⁰ See *id.*

⁴¹ See *id.* at 785-86.

⁴² The issue is of added significance given the rising number of women immigrants. During the 1980s, the number of legal women immigrants equaled the number of men. The increase in the number of women immigrants reflects the American post-1965 immigration policy emphasis on family reunification. Women comprise a significant percentage of immediate-relative immigrants. See generally Katherine M. Donato, *Understanding U.S. Immigration: Why Some Countries Send Women and Others Send Men*, in SEEKING COMMON GROUND: MULTIDISCIPLINARY STUDIES OF IMMIGRANT WOMEN IN THE UNITED STATES, 159-62 (Donna Gabaccia ed., 1992).

tered immigrant women. Under the Immigration and Nationality Act,⁴³ marriage to a United States citizen or legal permanent resident ("LPR") confers certain immigration benefits on the immigrant spouse.⁴⁴ In 1986, Congress passed the Immigration Marriage Fraud Amendments ("IMFA")⁴⁵ in response to INS concerns about perceived increases in "sham" marriages.⁴⁶ IMFA changed the status of immigrants who married United States citizens or legal permanent residents. Before the passage of IMFA, an immigrant spouse was granted permanent residency regardless of the length of the marriage.⁴⁷ Under IMFA, the United States citizen or LPR had to petition the Immigration and Naturalization Service ("INS") for a two-year conditional residency for his immigrant wife.⁴⁸ The conditional period commenced on the date she obtained conditional status, rather than at the beginning of the marriage.⁴⁹ Legal permanent residency was only obtained when the immigrant woman and the sponsor-husband jointly petitioned the INS to adjust her conditional status to permanent residency before the end of the two years.⁵⁰ The immigrating wife's conditional status automatically terminated and she became subject to immediate deportation if the couple failed to petition jointly,⁵¹ or if the marriage dissolved at any time during the conditional residency.⁵²

1. Waivers

IMFA however, provided a waiver of the joint petition requirement where the immigrant established that "extreme hardship" would result from deportation,⁵³ or where the marriage had been entered into in good faith but had been terminated by the conditional resident for good cause, and the conditional resident

⁴³ Immigration and Nationality Act, 8 U.S.C. § 1186a (1994).

⁴⁴ See generally *id.*

⁴⁵ Immigration Marriage Fraud Amendments of 1986, 8 U.S.C. § 1186a(b) (1994).

⁴⁶ Sham marriages are marriages entered into fraudulently to gain benefits that legal immigration status confers, such as a green card. See Arthur F. Corwin, *The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981*, 45 LAW & CONTEMP. PROBS. 223 (1982). INS figures indicated that up to 30% of all marriages between immigrants and United States citizens or permanent residents were sham marriages. See Joe A. Tucker, *Assimilation to the United States: A Study of the Adjustment of Status and the Immigration Marriage Fraud Statutes*, 7 YALE L. & POL'Y REV. 20, 31 (1989).

⁴⁷ See Anderson, *supra* note 15, at 1412.

⁴⁸ See 8 U.S.C. § 1186a(a)(1). Unless otherwise specified, conditional permanent residents have the same rights, privileges, responsibilities and duties as other lawful permanent residents. See 8 C.F.R. § 216.1 (1996).

⁴⁹ See 8 U.S.C. § 1186a(a)(1). If the sponsor-spouse fails to file a petition for conditional residency, the immigrant wife has no legal status and is deportable.

⁵⁰ See *id.* § 1186a(c). The joint petition must be filed during the 90-day period preceding the second anniversary of the alien's grant of conditional residency. See 8 U.S.C. § 1186a(d)(2)(A).

⁵¹ See *id.* § 1186a(c)(2).

⁵² See *id.* § 1186a(b)(1).

⁵³ See *id.* § 1186a(c)(4)(A).

was not at fault for failing to file the joint petition.⁵⁴ These two waivers, however, did not adequately protect battered women with conditional residency status.

a. The "Extreme Hardship" Waiver

Under the "extreme hardship" waiver, a conditional resident was permitted to waive the joint petition requirement if she could prove that deportation would subject her to "extreme hardship."⁵⁵ The "extreme hardship" waiver did not provide effective relief to battered immigrant women because such a showing was difficult to make, particularly since the INS was unlikely to find extreme hardship except in rare cases.⁵⁶ Economic deprivation, lack of family assistance, or the fact that an immigrant woman would not be able to find work in her home country did not constitute "extreme hardship" by INS standards.⁵⁷ Furthermore, an immigrant woman may have been the victim of domestic violence which undoubtedly created extreme hardship for the woman, but this did not qualify her for the waiver. This is because the focus of the hardship inquiry was on whether deportation would result in extreme hardship, and not on the extreme hardship endured during the marriage.⁵⁸ Thus, according to INS standards, being a victim of domestic violence did not constitute "extreme hardship" sufficient to justify a waiver of the joint petition requirement. As a result, the "extreme hardship" waiver offered little protection to battered immigrant women.

b. The "Good Faith/ Good Cause" Waiver

To obtain a "good faith/good cause" waiver to the joint petition phase of the process, a battered immigrant woman with conditional status had to demonstrate that she entered into the marriage in good faith, and that she initiated the divorce proceedings for good cause.⁵⁹ The "good faith/good cause" waiver has since been modified, but this also proved problematic to immigrant victims of domestic violence. First, the waiver required the legal termination of a marriage; mere separation rendered the woman ineligible for a waiver.⁶⁰ The immigrant woman also had to initiate the divorce - a requirement that essentially created a

⁵⁴ See *id.* § 1186a(c)(4).

⁵⁵ See *id.* § 1186a(c)(4)(A).

⁵⁶ See Anderson, *supra* note 15, at 1413 n.78 (citing *INS v. Wang*, 450 U.S. 139, 145 (1981) (holding that "[t]he Attorney General and his delegates have the authority to construe 'extreme hardship' narrowly")).

⁵⁷ See *id.*; see also Deana L. Jang, *Caught In A Web: Immigrant Women and Domestic Violence*, 28 CLEARINGHOUSE REV. 397, 403 (1994).

⁵⁸ See Letter from Bonnie Derwinski, INS Director of Congressional and Public Affairs, to the Honorable Louise Slaughter (Oct. 19, 1989), reprinted in 66 INTERPRETER RELEASES 1428 (1989).

⁵⁹ See 8 U.S.C. § 1186a(c)(4)(B).

⁶⁰ See *id.*; see also Lee, *supra* note 6, at 789 n.75; Pressman, *supra* note 12, at 137.

"race to the courthouse."⁶¹ This created additional problems for immigrant women. The lack of affordable family law services, particularly for those with limited English skills, made even the most simple dissolution difficult to obtain.⁶² Furthermore, although the INS recognized domestic violence as "good cause" for terminating a marriage, divorce proceedings in a "no-fault" jurisdiction created evidentiary problems for battered women.⁶³

The IMFA provisions created additional difficulties for immigrant women in domestic violence situations by providing a powerful weapon to the abusive husband to maintain complete control over a battered immigrant woman's status as an LPR.⁶⁴ A battered woman could not gain legal immigration status if her sponsor-husband did not file the appropriate petitions, which he was free to withdraw at anytime.⁶⁵ As a result, IMFA provisions created a framework under which a battered immigrant woman had to choose between remaining in an abusive marriage until the conditions of conditional status were removed, or leave and risk deportation if her sponsor-husband withdrew the petition or if the INS denied her waiver application. Thus, IMFA created a situation in which a battered immigrant woman's ability to remain in the United States depended exclusively on her husband's goodwill and the continued viability of her marriage.⁶⁶ When faced with the choice of protection from batterers or protection against deportation, many battered immigrant women chose the latter. Many women were simply unwilling to leave even the most abusive of partners for fear of being deported.

B. *The Immigration Act of 1990*

Congress enacted the Immigration Act of 1990⁶⁷ ("the 1990 Act") in response to the negative impact that IMFA had on victims of domestic violence. Although the "extreme hardship" waiver established under IMFA was left unchanged, the 1990 Act contained two important provisions. First, the 1990 Act amended the "good faith/good cause" waiver by eliminating the requirement that the battered woman be the moving party in a divorce proceeding.⁶⁸ This meant that "good cause" for termination of a marriage was no longer required and that either

⁶¹ See 8 U.S.C. § 1186a(c)(4)(B). See also Lee, *supra* note 6, at 790; Pressman, *supra* note 12, at 137.

⁶² See Jang, *supra* note 57, at 7.

⁶³ See *id.* This concept of a "no-fault" divorce is at odds with the purpose of the waiver itself, since a no fault divorce fails to prove that a woman initiated divorce proceedings for "good cause."

⁶⁴ See Pressman, *supra* note 12, at 134.

⁶⁵ See Janet M. Calvo, *Spouse-Based Immigration Laws: The Legacies of Coverture*, 28 SAN DIEGO L. REV. 593, 606 (1991).

⁶⁶ See Anderson, *supra* note 15, at 1413.

⁶⁷ The Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified as amended in scattered sections of 8 U.S.C.).

⁶⁸ See 8 U.S.C. § 1186a(c)(4)(B).

party could commence divorce proceedings.⁶⁹ More importantly, the Act added a new waiver provision called the "battered spouse/child" waiver.⁷⁰

1. The "Battered Spouse" Waiver

The "battered spouse" waiver ensures that the threat of losing real residency status will not trap victims of domestic violence in abusive marriages.⁷¹ In contrast to the earlier "good faith/good cause" waiver, an immigrant woman could qualify for the "battered spouse" waiver even if she was divorced.⁷² A battered immigrant woman could qualify for the waiver if she could prove that she had entered into the marriage in good faith and that she or her children had been battered or subjected to "extreme mental cruelty" by the sponsor-husband.⁷³ This meant that a battered immigrant woman could adjust her residency status to that of a permanent resident.⁷⁴

Although the 1990 Act made it easier for battered immigrant women to leave violent marriages and achieve legal permanent status, some major problems remained. Despite the "battered spouse" waiver, the Act left an abusive husband in control over the initial petitioning process.⁷⁵ Even assuming that an initial petition was filed, the Act did not prevent an abusive husband from withdrawing the petition at any time before a battered immigrant woman's residency status was adjusted.⁷⁶

Withdrawal of the petition resulted in the loss of the immigrant woman's right to remain legally in the United States.⁷⁷ As a result, the immigrant woman became an illegal alien, without work authorization and subject to deportation.⁷⁸ Thus, in spite of the waiver, leaving an abusive situation was not a viable option for battered immigrant women. Furthermore, the Act only applied to battered women who had acquired conditional status and failed to take into account the large group of undocumented women whose husbands never filed an initial petition to commence their conditional status.⁷⁹ The Act also failed to protect women who may have entered the United States as non-immigrants, married a citizen or LPR more than two years ago, but neglected to change their immigration

⁶⁹ See *id.*

⁷⁰ See *id.* § 1186a(c)(4)(C).

⁷¹ See H. R. REP. NO. 723, pt. 1, at 78 (1990).

⁷² See 8 C.F.R. § 216.5(e)(3)(ii) (1996).

⁷³ 8 U.S.C. § 1186a(c)(4)(C). Congress intended battered spouse waiver requests to be granted when battery or extreme cruelty is demonstrated. Congress curtailed the Attorney General's discretion in these cases by limiting denials to "rare and exceptional circumstances such as when the alien poses a clear and significant detriment to the national interest." H.R. REP. NO. 723, 101st Cong., 2d Sess. pt. 1, at 78-79 (1990).

⁷⁴ See 8 U.S.C. § 1186a(c)(4)(C).

⁷⁵ See Pressman, *supra* note 12, at 139.

⁷⁶ See Calvo, *supra* note 65, at 606.

⁷⁷ See *id.* at 622.

⁷⁸ See *id.*

⁷⁹ See *id.*; see also Pressman, *supra* note 12, at 140.

status. As a result, these women became undocumented once their visa expired.⁸⁰ The Act did not help these undocumented women who remained trapped in domestic violence situations due to their fear of deportation.

2. INS Regulations

The INS regulations interpreting and implementing the 1990 Immigration Act were unnecessarily burdensome on battered immigrant women. The regulations raised significant concerns with their stringent evidentiary requirements. The INS regulations separated the "battered spouse" waiver exception into two areas: physical battery and extreme mental cruelty.⁸¹ Under these regulations, battered spouses were required to prove abuse by providing the INS with certain types of evidence.

The INS regulations required proof of physical abuse including "expert" testimony in the form of reports and affidavits from police, medical personnel, school officials, and social service agency personnel.⁸² The regulations further mandated the INS' satisfaction with the credibility of the sources of documentation submitted in support of the application.⁸³ However, getting the documentation required under the regulations proved burdensome for many battered immigrant women. Cultural and language barriers, embarrassment, and fear of deportation or reprisals from their batterers made available services such as shelters, police, and doctors unacceptable for many immigrant women who came from vastly different cultural backgrounds.⁸⁴ Additionally, reporting abuse or seeking help of any sort, whether in the form of restraining orders, medical attention, or help from the police could be particularly frightening for these women.⁸⁵ As a result, many battered immigrant women rarely had police records to help prove battery, especially if they did not call the police at the time of the assault.⁸⁶

The evidentiary requirements for "battered spouse" waiver applicants claiming "extreme mental cruelty" proved to be even more difficult to obtain. The INS regulations set out particularly stringent evidentiary requirements under this

⁸⁰ See Pressman, *supra* note 12, at 140.

⁸¹ See 8 C.F.R. § 216.5(e)(3)(i) (1996).

⁸² See *id.* § 216.5(e)(3)(iii).

⁸³ See *id.*

⁸⁴ See Pressman, *supra* note 12, at 141-42.

⁸⁵ See Jang, *supra* note 27, at 8.

⁸⁶ One study has shown that "[o]nly 6 out of 304 battered immigrant women reported ever calling the police." Anderson, *supra* note 15, at 1418 n.106. Furthermore, in some jurisdictions, police are poorly trained in handling domestic violence situations. In some jurisdictions, police do not file a formal report unless the woman is willing to file criminal charges or requests that a report is made. In some jurisdictions, officers merely tell the husband to stop abusing the wife but will not file a police report. See Deborah Weissman, *Proving Physical Abuse or Extreme Cruelty*, in *RESOURCES ON NEW RIGHTS FOR BATTERED IMMIGRANTS* (Nat'l Immigr. Project of the Nat'l Law. Guild, Boston, MA) at 3 (1996).

category. The regulations required applications to be supported by the evaluation of a professional recognized by the INS as an "expert in the field."⁸⁷ However, the only professionals recognized by the INS for this purpose were "licensed clinical social workers, psychologists and psychiatrists."⁸⁸ Personal affidavits from individuals who were not mental health professionals were unacceptable.⁸⁹ The narrow application and documentation guidelines made qualification for the waiver difficult since many immigrant women did not have a medical report to help prove the injuries they suffered. These women often could not afford to or would not seek the services of a doctor, let alone a psychologist or psychiatrist to document their abuse.⁹⁰ Furthermore, language barriers created additional problems. Bilingual professionals are often unavailable, and many women do not have the economic resources to have evaluations conducted through an interpreter.⁹¹

Moreover, the evidence required to establish extreme mental cruelty focused entirely on the effect the abuse had on the victim, rather than on whether the abuser's behavior constituted extreme cruelty.⁹² A resilient woman who did not clinically show the debilitating effects of psychological cruelty would therefore not qualify for a waiver even if she deserved one based on the level of abuse she sustained.⁹³ Thus, combined with the lack of resources to pay for medical attention or language assistance, a battered immigrant woman often found it difficult to meet the mental cruelty evidentiary requirement.

While the 1990 Immigration Act and INS regulations alleviated some of the problems faced by battered immigrant women, the statutory and regulatory framework remained flawed and incomplete. The framework left abusive hus-

⁸⁷ 8 C.F.R. § 216.5(e)(3)(iv) (1996).

⁸⁸ *Id.* § 216.5(e)(3)(vii).

⁸⁹ See Pressman, *supra* note 12, at 142.

⁹⁰ See Anderson, *supra* note 15, at 1418 n.106.

⁹¹ See *id.* at 1418 n.108. A survey of the psychiatrists, psychologists, and clinical social workers in the entire Los Angeles area, which has one of the largest concentrations of immigrants in the United States, revealed that very few bilingual professionals are available. Of those available, most were private practitioners and would not evaluate clients free of charge. "[T]here are only 8 licensed clinical psychiatrists, 7 licensed clinical psychologists and 23 licensed clinical social workers who target the Asian and Pacific Islander community. The language capabilities of most of these professionals are limited to the five major Asian Pacific groups There are few, if any, licensed bilingual workers for a dozen or more smaller Asian Pacific subgroups (e.g., Cambodian, Samoan and Thai)." Telephone Interview with Estelle Chun, Deputy Director of the Asian Pacific American Legal Center of Los Angeles, Cal. (Mar. 10, 1992) as quoted in Anderson, *supra* note 15, at 1418 n.107. Furthermore, 31% of Latinas reported that lack of bilingual services were central barrier to their utilizing social services. See CHRIS HOGELAND & KAREN ROSEN, DREAMS LOST, DREAMS FOUND: UNDOCUMENTED WOMEN IN THE LAND OF OPPORTUNITY 19 (1991).

⁹² See Anderson, *supra* note 15, at 1418-19.

⁹³ See *id.* at 1419.

bands in control of the petitioning process and it established evidentiary requirements that the vast majority of immigrant women could never hope to meet.

C. *The Violence Against Women Act of 1994*

In an effort to close some of the gaps left by the 1990 Immigration Act, Congress passed the Violence Against Women Act ("VAWA") as part of the Violent Crime Control and Law Enforcement Act of 1994.⁹⁴ Congress intended VAWA to make prevention of violence against women "a major law enforcement priority,"⁹⁵ and included provisions specifically designed to protect battered immigrant women.⁹⁶

VAWA contained several critical amendments. Immigrant victims of domestic violence with conditional status can now self-petition to adjust their immigration

⁹⁴ Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796, 1902 (1994) (codified as amended in scattered sections of 8 U.S.C., 16 U.S.C., 18 U.S.C., 28 U.S.C., and 42 U.S.C.). Since the passage of VAWA in 1994, two cases have challenged its constitutionality, resulting in a federal circuit split. A District Court in Virginia declared the 1994 Violence Against Women Act unconstitutional, basing its decision on *United States v. Lopez*, concluding that domestic violence crimes have little to do with interstate commerce and, thus, are beyond Congress' power to regulate. See *Brzonkala v. Va. Polytechnic & State Univ.*, No. CIV. A. 95-1358-R, 1996 WL 431097 (W.D. Va. 1996). A District Court in Connecticut, however, upheld the constitutionality of VAWA, concluding that gender based crimes prevent women from "fully participating in the national economy," thus falling under Congress' commerce clause powers. *Doe v. Doe*, 929 F. Supp. 608 (D. Conn 1996).

⁹⁵ *Developments in the Law - Legal Responses to Domestic Violence: New State and Federal Responses to Domestic Violence*, 106 HARV. L. REV. 1528, 1544 n.118 (1993). VAWA addresses the problem of violent crimes against women by taking a multi-prong approach. First, it allocates funds to improve education and public awareness of domestic violence, focusing on children in school and "underserved minority communities." See *id.* §§ 10417-10418 (1994). Second, it provides financial support for the training of police, prosecutors, and judges to enable better responses to violent crimes. See *id.* §§ 13991-14001. Third, VAWA enacts specific protections for battered women including confidentiality guarantees, see *id.* § 13951, a nationwide toll-free hotline, see *id.* § 10416, grants for shelters, see *id.* § 40241, and improved arrest policies, see *id.* § 3796hh. Fourth, it allows victims of violent felonies motivated by gender bias to bring suits against their attackers using the civil court system. See *id.* § 13701. Finally, it addresses the predicament faced by battered immigrant women trapped in abusive relationships because of immigration laws.

⁹⁶ Although the title of this portion of the Violent Crime Control and Law Enforcement Act reflects the fact that many abuse victims are women, the INS regulations implementing certain VAWA provisions provides that abused spouses and children of either sex may benefit from the provisions. See *Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. 13061, 13062 (1996) (to be codified at 8 C.F.R. §§ 103, 204, 205, 216) [hereinafter *Self Petitioning for Certain Battered or Abused Spouses*].

status without the co-operation and participation of their sponsor-husband.⁹⁷ VAWA also provides a provision for the suspension of deportation for undocumented spouses and children who have been abused by their United States citizen or LPR husbands.⁹⁸

1. The Self-Petitioning Provision

As of January 1, 1995, a battered immigrant woman could file a petition with the Attorney General on her own behalf for unconditional permanent resident status without having to depend on her husband's participation or co-operation.⁹⁹ The immigrant woman must demonstrate that: i) she is a person of good moral character;¹⁰⁰ ii) she has lived in the United States with her citizen or LPR spouse;¹⁰¹ iii) she is currently residing in this country; iv) she married in good faith;¹⁰² v) during the marriage, the alien or her child was battered or subjected to extreme cruelty by her spouse;¹⁰³ and vi) deportation would result in extreme

⁹⁷ See 8 U.S.C. § 1154(a)(1)(A)(iii)(I).

⁹⁸ See *id.* § 1254(a)(3).

⁹⁹ See *id.* § 1154(a)(1)(A)(iii)(I).

¹⁰⁰ A potential problem arises because actions taken against a woman flowing from her experience of abuse may affect the good moral character requirement. These include an abuser filing for custody of children based on an immigrant woman's undocumented status, bringing counter charges against the wife in criminal proceedings, or government agencies such as Department of Social Services intervening to take children away from the woman. See Gail Pendleton & Sarah Ignatius, *New Immigration Relief for Women and Children Suffering Abuse*, 22(4) IMMIGR. NEWSL. (Nat'l Immigr. Project of the Nat'l Law. Guild, Boston, MA) June 1995, at 24.

¹⁰¹ The batterer must have the status of a United States citizen or legal permanent resident, both at the time of filing and at the time of approval of the petition. See Self Petitioning for Certain Battered or Abused Spouses, 61 Fed. Reg. 13061, 13062 (1996). Women abused by undocumented batterers do not qualify for protection under VAWA. See Sarah Ignatius & Gail Pendleton, *New Immigration Relief For Women and Children Suffering Abuse*, (1996 Update) in RESOURCES ON NEW RIGHTS FOR BATTERED IMMIGRANTS, *supra* note 86, at 7.

¹⁰² Marriage between the immigrant wife and spouse must have been entered into in "good faith." This means that the couple must not have married for the sole purpose of getting immigrant status. See 8 U.S.C. § 1186a(b)(1). The INS can deport non-citizens for committing marriage fraud. See *id.* § 1251(a)(1)(G) (1994). If a battered immigrant woman is in a common law marriage, the law of the state or country where they were "married" determines whether it is a marriage under immigration laws. See Pendleton & Ignatius, *supra* note 100, at 28 n.10.

¹⁰³ INS interim regulations define these terms as including but not limited to "being the victim of any act or threatened act of violence, including any forceful detention which results or threatens to result in physical or mental injury." 8 C.F.R. § 216.5(e)(3)(i) (1996). Acts of violence include "psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution," as well as "other abusive actions. . . that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence." *Id.* § 204.2(c)(1)(vi) & (e)(1)(vi).

hardship to her or her child.¹⁰⁴ This self-petitioning provision protects women who fear that leaving an abusive spouse will subject them to deportation, or will jeopardize their chances of gaining legal status. It permits a battered immigrant woman to self-petition for nationality when her sponsor-husband refuses to cooperate in filing the joint petition to begin or remove conditional status.¹⁰⁵ Most importantly, the self-petitioning provision prevents the abusive husband from using the petitioning process and immigration laws as a means to control or abuse the immigrant woman.¹⁰⁶

2. The Suspension of Deportation Provision

VAWA provides another avenue of relief through the suspension of deportation provision.¹⁰⁷ To qualify for this form of relief, an applicant must first be "deportable," which usually means that they are present in the United States without legal immigration status.¹⁰⁸ Under this provision, a battered immigrant woman may apply for suspension of deportation if she can prove that: i) she has been physically present in the United States for at least three years immediately prior to the application;¹⁰⁹ ii) she was battered or subjected to extreme cruelty by her citizen or LPR spouse; iii) she is of good moral character; and iv) deportation would cause extreme hardship to her or her child.¹¹⁰ This avenue of relief is available to an undocumented battered woman who is subject to deportation as a result of her sponsor-husband's failure to file an initial petition to begin her conditional residency.¹¹¹ Thus, the suspension of deportation provision gives undocumented women the freedom to more readily leave batterers without the threat of

¹⁰⁴ See 8 U.S.C. § 1154(a)(1)(A)(iii)(I).

¹⁰⁵ According to the interim regulations, if a batterer previously filed a petition for an individual who subsequently files a self-petition, the priority date from the previous petition is transferred to the self-petitioner even if the abuser has withdrawn the original petition. See *Self-Petitioning for Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. 13061, 13069 (1996).

¹⁰⁶ See Pressman, *supra* note 12, at 149 n.150.

¹⁰⁷ See 8 U.S.C. § 1254(a)(3). The suspension law became effective when President Clinton signed the Act on September 13, 1994.

¹⁰⁸ Being without legal immigration status usually means that they are undocumented. People may be undocumented if they entered the United States without permission (entered without inspection) or stayed in the United States after their non-immigrant visa (student or tourist visa for instance) expired. People may have legal status, but are "deportable" for some other reason, such as violating conditions on a non-immigrant visa (working without permission, for instance). See Pendleton & Ignatius, *supra* note 100, at 26.

¹⁰⁹ This is a special form of suspension of deportation under VAWA that allows battered immigrant women to show only three years of continuous presence in the United States, rather than the seven years required under the existing suspension statute. See 8 U.S.C. § 1254(a)(1).

¹¹⁰ See *id.* § 1254(a)(3).

¹¹¹ See Pressman, *supra* note 12, at 152.

deportation.¹¹²

3. Other Provisions of the Violence Against Women Act

Under the previous statutory and regulatory framework, divorce resulted in the automatic termination of conditional status and the ability to petition for permanent residency.¹¹³ In cases of domestic violence, VAWA includes a provision that an approved self-petition cannot be revoked solely because a marriage has been legally terminated.¹¹⁴ This provision allows a battered woman to end an abusive marriage without loss of her residency status. Thus, if a couple divorces after the INS approves a battered woman's self-petition, the INS cannot revoke its approval solely because of the divorce.¹¹⁵

VAWA also relaxed the stringent evidentiary requirements of the 1990 Immigration Act's "battered spouse" waiver concerning proof of physical battery and extreme mental cruelty. VAWA did not explicitly repudiate the standards established in the previous INS regulations, but it directs the Attorney General to consider all "credible evidence" relevant to the petition.¹¹⁶

Moreover, an INS memorandum issued after the release of the interim regulations specifically prohibited the INS from requiring that applications claiming extreme mental cruelty be supported by the evaluation of a licensed mental health professional.¹¹⁷ The relaxation of this requirement may ease the evidentiary burden placed on battered immigrant women and may also encourage women with limited resources and language skills to seek help.¹¹⁸

D. Inadequacies In Interim INS Regulations

Although VAWA became effective on January 1, 1995, the INS did not issue interim regulations for the implementation of its provisions until March 26, 1996.¹¹⁹ The effectiveness of these regulations are limited, however, as they only

¹¹² The Act, however, does not guarantee that a battered immigrant woman will avoid deportation; rather it simply opens the door to her case.

¹¹³ See 8 U.S.C. § 1186a(b)(i)(1)(ii).

¹¹⁴ See *id.* § 1154(h).

¹¹⁵ See *id.*

¹¹⁶ See *id.* § 1186a(c)(4).

¹¹⁷ See Implementation of Crime Bill Self-Petitioning For Abused or Battered Spouses or Children of U.S. Citizens or Lawful Permanent Residents, INS Mem-HQ 204-P from T. Alexander Aleinikoff, Exec. Assoc. Comm'r, Office of Programs (Apr. 16, 1996) [hereinafter Alexander Memorandum].

¹¹⁸ See Pressman, *supra* note 12, at 153.

¹¹⁹ See Self-Petitioning For Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061 (1996). These regulations are only interim regulations with request for comment before final regulations are issued. Prior to the issuance of the interim regulations, the INS issued a cable to the field instructing INS officers to accept applications and explaining how battered spouses or children may file their applications. See Crime Bill Self-Petitioning Wire #1, INS Central Office Mem. HQ 204-P (Jan. 20, 1995) reprinted in 72 INTERPRETER RELEASES 178 (Jan. 30, 1995).

concern the self-petitioning provision of VAWA.¹²⁰ Despite the issuance of interim regulations, some uncertainties and significant problems still remain.¹²¹

The INS interim regulations fail to provide adequate protection to some battered immigrant women. According to the regulations, a battered immigrant woman must be married to her batterer when she self-petitions for permanent residency.¹²² Accordingly, if a battered immigrant woman's marriage to her abuser legally ended by annulment, death or divorce before she petitioned, her application would be denied.¹²³ For instance, a battered immigrant woman who has attempted to sever all ties from the abusive relationship by leaving and divorcing her batterer, is ineligible for relief under the self-petitioning provision of VAWA.

On a more positive note, however, the effect of a legally terminated marriage that occurs after the filing but before the approval of a self-petition is treated differently. Under the interim regulations, the legal termination of a marriage after a self-petition has been properly filed has no effect on a pending application.¹²⁴ Furthermore, the legal termination of a marriage that occurs after the filing of the self-petition, has no effect on a petition that has already been approved.¹²⁵

The suspension of deportation provisions under VAWA also raise significant concerns. Suspension of deportation is likely to be the only remedy for women whose batterer divorced them before they could self-petition or whose batterer's immigration status changed.¹²⁶ Although suspension of deportation is technically

¹²⁰ According to the INS, regulations concerning VAWA's suspension of deportation provision will be the subject of a separate rulemaking have yet to be issued. *See Self-Petitioning For Certain Battered or Abused Spouses*, 61 Fed. Reg. at 13062. However, as a result of the Anti-Terrorism and Effective Death Penalty Act, this is now unlikely. *See discussion infra* at Part III(C). Regulations concerning Section 40702 of VAWA, providing guidelines for acceptance and evaluation of credible evidence of abuse, will also be the subject of a separate rulemaking. *See id.*

¹²¹ For a more detailed analysis of the problems with the interim regulations, see National Network on Behalf of Battered Immigrant Women, *Comments to INS Interim Final Regulations*, (Model Comments) in *RESOURCES ON NEW RIGHTS FOR BATTERED IMMIGRANTS*, *supra* note 86 [hereinafter Model Comments].

¹²² According to the INS regulations, the self petitioning provision of VAWA describes the spousal relationship between petitioner and abuser in the present tense, that is, "as a person who *is* the spouse of a citizen or permanent resident of the United States." *Self-Petitioning For Certain Battered or Abused Spouses*, 61 Fed. Reg. at 13062 (emphasis added).

¹²³ *See id.*

¹²⁴ *See id.* at 13062-63. The INS regulations provide, however, that a pending spousal petition will be denied or an approved self-petition will be revoked if the self-petitioner chooses to remarry before gaining permanent residency status. *See id.*

¹²⁵ VAWA specifically provided that the INS cannot revoke the approval of a self-petition solely because the marriage has legally ended. *See* 8 U.S.C. § 1154(h).

¹²⁶ The regulations also stipulate that the abuser must be a United States citizen or a legal permanent resident at the time when the petition is filed, and also when the petition is approved. *See Self-Petitioning for Certain Battered or Abused Spouses*, 61 Fed. Reg. at

available to battered immigrant women, they actually have no mechanism through which they can affirmatively apply for relief.¹²⁷ Battered immigrant women cannot apply for this form of relief because the INS currently takes the position that they cannot go to the INS voluntarily and file for suspension of deportation. Instead, battered women seeking protection under VAWA's suspension of deportation provisions must wait until the INS starts deportation proceedings against them.¹²⁸

There is also some uncertainty as to how "extreme hardship" will be construed. VAWA does not define the phrase,¹²⁹ but the "extreme hardship" requirement is an important element of both the self-petitioning and suspension of deportation provisions which require the battered immigrant woman to show that deportation would result in "extreme hardship" to her or to her child. The interim regulations concerning the self-petitioning provision recognize that circumstances surrounding domestic violence and the consequences of abuse may cause "extreme hardship," thus adopting a definition of "extreme hardship" that is tailored to battered immigrant women.¹³⁰ However, it is still unclear how the phrase will be interpreted under the suspension of deportation provision. Under current suspension laws, the phrase "extreme hardship" has acquired a settled judicial and administrative meaning where it is the most difficult statutory requirement to meet.¹³¹ Furthermore, applications for suspension of deportation

13063. Thus, a change in the batterer's immigration status will adversely affect a battered immigrant woman's self-petition. However, changes in the abuser's immigration status after approval of a petition will not affect an approved self-petition. *See id.* at 13063. If the batterer naturalizes, his change of status does not affect the self-petition, which does not convert to an immediate relative classification. *See* 8 C.F.R. § 204.2(c)(1)(iii) and (e)(1)(iii). This rule differs from other family based petitions that convert automatically upon a change in the petitioner or beneficiary's status. *See generally id.* § 204.2(h).

¹²⁷ *See* Model Comments, *supra* note 121, at 48.

¹²⁸ *See* Pendleton & Ignatius, *supra* note 100, at 27.

¹²⁹ According to the INS regulations, the phrase "extreme hardship" is not a definable term of fixed and inflexible content or meaning. *See* Self-Petitioning For Certain Battered or Abused Spouses, 61 Fed. Reg. at 13067. It must be evaluated on a case-by-case basis after review of all the circumstances in the case. *See id.*

¹³⁰ The INS warns, however, that domestic violence does not automatically establish that a person's deportation would result in extreme hardship. *See* Alexander Memorandum, *supra* note 117, at 8. However, the regulations provide that self-petitioners may wish to cite and provide evidence including some of the following: the nature and extent of the physical and psychological consequences of the battering or extreme cruelty; the existence of laws, social practices, or customs in the foreign country that would ostracize the self-petitioner for having been the victim of abuse, for leaving the abusive situation, or for actions taken to stop the abuse. *See* Self-Petitioning For Certain Battered or Abused Spouses, 61 Fed. Reg. at 13067.

¹³¹ *See* Hernandez-Patino v. INS, 831 F.2d 750, 754-55 (7th Cir. 1987) (economic deprivation, lack of family assistance and denial of special education for disabled children do not constitute economic hardship for relief from deportation); *see also* Davidson v. INS, 558 F.2d 1361 (9th Cir. 1977) and Matter of Sipus, 14 I. & N. Dec. 229 (BIA 1972) (the hardship requirement requires more than mere economic deprivation that might result

have traditionally been viewed as an extraordinary form of relief, extended only to the most deserving applicants who have established strong ties to the United States.¹³² As with most forms of deportation relief, suspension of deportation under VAWA is discretionary, and immigration judges have broad discretion to define "extreme hardship" narrowly.¹³³ As a result, battered immigrant women may not be able to convince a judge that their deportation would result in extreme hardship.¹³⁴ Thus, in addition to meeting statutory requirements, a battered immigrant woman must demonstrate that she merits the relief as a matter of discretion.¹³⁵ It is possible that a battered immigrant woman may meet all the statutory requirements but still be denied suspension of deportation in the exercise of a judge's discretion, thus losing the opportunity to remain in the United States.¹³⁶

Advocates for battered immigrant women have operated against restrictive immigration policies and strong anti-immigrant sentiment to develop strategies to extend legal protection to battered immigrant women. It has taken a decade of legislation, but VAWA took a major step towards closing the gaps left by IMFA, the 1990 Immigration Act, and the previous INS regulations. As a result, VAWA furthered efforts to prevent immigration laws from being used as a weapon against battered immigrant women. However, some problems and uncertainties still remain, some of which could be resolved when the INS issues final regulations implementing VAWA.

IV. PROBLEMS IN THE CO-EXISTING FRAMEWORK

The statutory and regulatory framework that has evolved provides a baseline of protection for battered immigrant women. This framework allows battered immigrant women to leave abusive situations by providing for self-petitioning and the suspension of deportation. However, these provisions only address the problems created by immigration laws and the requirements of conditional residency. Battered immigrant women who leave abusive situations are, however,

from deportation from the United States); *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977) (loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship); and *Matter of Uy*, 11 I. & N. Dec. 159 (BIA 1965) (readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme hardship).

¹³² See Lee Teran & Barbara Hines, 23 (1) IMMIGR. NEWSL. 13 (Nat'l Immigr. Project of the Nat'l Law. Guild, Boston, MA) (1995).

¹³³ See *id.* at 13. See also, e.g., *INS v. Wang*, 450 U.S. 139, 145 (1981) ("The Attorney General and his delegates have the authority to construe 'extreme hardship' narrowly.").

¹³⁴ "It's a standard that immigration judges apply very strictly . . . I've seen maybe five percent of these cases get a suspension of deportation." Margaret Donnelly, Professor of Immigration Law at Southwestern Methodist University, quoted in Thomas Huang & Frank Trejo, *Immigrant Spouses Put Hopes In New Law: Wives Can Remain in U.S. If They Can Prove Abuse*, NEW ORLEANS TIMES-PICAYUNE, May 11, 1995, at A28.

¹³⁵ See Teran & Hines, *supra* note 132, at 11.

¹³⁶ See *id.*

also confronted with critical crossover issues affecting their safety and economic status. These crossover issues must be addressed in the co-existing legal framework to ensure that the protections that were gained by VAWA are not undermined.

A. Work Authorization

Even if current laws enable battered immigrant women to remain in the United States, women still face the daunting task of finding housing and securing financial support for themselves and their children.¹³⁷ Battered immigrant women are often subject to complete control and financial isolation by their husbands. Many do not have access to cash, checking accounts, or charge accounts.¹³⁸ As a result, many immigrant women who are completely dependent on their husbands leave violent relationships with little or no independent financial resources.¹³⁹ Furthermore, battered immigrant women often lack the education and skills necessary to find a higher paying job that would allow them to become financially independent. Thus, for immigrant women victimized by domestic violence, work authorization is of paramount importance.

1. VAWA Self-Petition Applicants

A battered woman's ability to receive work authorization as a self-petitioner depends on whether she is married to a United States citizen or an LPR. If a battered woman is married to a United States citizen, she can file an application for "adjustment of status" to legal permanent residency at the same time as her self-petition, and may obtain work authorization.¹⁴⁰ This means that battered immigrant women, married to United States citizens, will have swift access to work authorization.

The situation is very different for self-petitioners who are married to abusive LPRs. These women may be forced to delay filing applications for "adjustment to status" to legal permanent residency because this category is subject to the visa allocation system which restricts the number of persons who may be

¹³⁷ See Jang, *supra* note 27, at 403.

¹³⁸ One study showed that 27% of battered women had no access to cash, 34% had no access to a checking account, 51% had no access to charge accounts and 22% had no access to a car. See LENORE WALKER, *THE BATTERED WOMAN SYNDROME* (1984).

¹³⁹ A woman's standard of living declines on average, by 42% after separation, while a man's standard of living increases by 73%. See *Domestic Violence: The Struggle For Survival, Hearing Before A Subcomm. of the Comm. on Appropriations, U.S. Senate, 102d Cong, 1st Sess, S. Hrg. 102-45 at 3* (1991).

¹⁴⁰ According to INS regulations, self-petitioners may be eligible to apply for employment authorization under the existing provisions of 8 C.F.R. § 274a.12(c)(9) which allow a person who has properly filed an "adjustment of status" application to request work authorization while the adjustment application is pending. See *Self-Petitioning For Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. at 13070-71 (1996).

granted legal permanent residency in any single year.¹⁴¹ Battered immigrant women whose eligibility is based on a relationship with a LPR cannot apply for "adjustment of status" until a visa is issued.¹⁴² A "priority" date determines an applicant's place in the waiting line and visa numbers are allocated in priority date order, which is typically the filing date of the application.¹⁴³ It now takes approximately three years for the priority date to "become current" so that the visa can be issued.¹⁴⁴ Women who are married to LPRs cannot request work authorization until they have properly filed an adjustment of status, but they cannot file to adjust their status until a visa is issued. Thus, battered immigrant women cannot even work despite the lengthy period that it takes to issue the visa.¹⁴⁵ Without work authorization, a battered woman who has left her husband will have even greater difficulty achieving financial independence. She is likely to only find "under the table" jobs that are offered by unscrupulous employers who subject their workers to low wages, poor working conditions, and no benefits.¹⁴⁶ Furthermore, if the INS discovers that a woman is working without work

¹⁴¹ Section 201(b)(2)(A)(i) and § 202 of the Immigration and Nationality Act place certain limits on the number of qualified persons who may be granted lawful permanent residents during any single year. See §§ 201, 202, 8 U.S.C. §§ 1151, 1153; and Self-Petitioning For Battered or Abused Spouses, 61 Fed. Reg. at 13069. A self-petitioner who qualifies for immigrant classification as the spouse or child of a United States citizen, however, is not subject to direct numerical limitations. See 8 U.S.C. § 1151(b)(2)(A)(i).

¹⁴² See Pendleton & Ignatius, *supra* note 100, at 25.

¹⁴³ See *id.*

¹⁴⁴ *Id.* According to INS regulations, a self-petitioner whose abusive husband previously filed a petition for conditional residency, can transfer the earlier priority date, even if the abuser has withdrawn the original petition. See Self-Petitioning for Certain Battered or Abused Spouses, 61 Fed. Reg. at 13069. This is good for self-petitioners in these situations as they will not have to wait as long for a visa.

¹⁴⁵ For women who are married to LPRs, their only other options are to request the INS for voluntary departure (which requires the person to leave the country, but avoids the stigma of deportation, and most importantly, it facilitates the possibility of immediate return to the United States) or deferred action (where the INS determines that "adverse action would be unconscionable because of the existence of appealing humanitarian factors," the INS will take no action to disturb the immigration status so that departure from the United States is deferred indefinitely), and to request work authorization under those statutes. See Self-Petitioning for Certain Battered or Abused Spouses, 61 Fed. Reg. 13071; see also Alexander Memorandum, *supra* note 117, at 4-5. However, applicants for employment authorization pursuant to voluntary departure or deferred action must show an "economic need to work." See 8 C.F.R. § 274a.12(c)(10) (1996); see also Alexander Memorandum, *supra* note 117, at 5. However, this is a restrictive approach of providing employment authorization only to VAWA applicants who can obtain work authorization by qualifying for another immigration status. This disregards the essential premise on which VAWA was enacted; abuse victims, because they fear deportation and do not have lawful status, needed a separate remedy of their own. See Model Comments, *supra* note 121, at 40. Furthermore, there is also the possibility that showing an "economic need to work" will affect future public charge considerations. See *infra* discussion at Part V(B).

¹⁴⁶ See Jang, *supra* note 27, at 404.

authorization, it will jeopardize the outcome of her pending application and subject her to deportation. Without work authorization these battered immigrant women will have no means by which to support themselves, and will be forced to return to their husbands and remain trapped in abusive relationships.¹⁴⁷

2. VAWA Suspension of Deportation Applicants

According to the INS, battered immigrant women who wish to file for suspension of deportation during immigration court proceedings may request work authorization.¹⁴⁸ Battered immigrant women, however, cannot file affirmatively for suspension of deportation as the INS currently takes the position that a person cannot voluntarily go to the INS to file for suspension of deportation under the VAWA provision.¹⁴⁹ This means that battered immigrant women cannot request work authorization until the INS initiates deportation proceedings against them. Thus, a battered immigrant woman is left with no legal means by which to work and to support herself and her children, precipitating a forced return to her batterer husband.

B. Public Benefits

Even if battered immigrant women are able to gain work authorization, it still may not be enough for them to survive independently. Circumstances often demand that battered women live, work, and care for their children in a location unknown to the abuser in order to escape violence.¹⁵⁰ Many battered immigrant women have to leave their jobs and go into hiding from their abusive husbands.¹⁵¹ In many other situations, however, the lack of education or necessary

¹⁴⁷ The inability to work and survive economically is the single most important reason battered immigrant women return to their abusers. See C.M. Sullivan et al., *After The Crisis: A Needs Assessment of Women's Leaving Domestic Violence Shelters*, 7(3) VIOLENCE & VICTIMS 267, 272-74 (1992).

¹⁴⁸ See 8 C.F.R. § 274a.12(c)(10) (1996). This is true whether the applicant is married to a United States citizen or LPR. See Pendleton & Ignatius, *supra* note 100, at 27.

¹⁴⁹ See Pendleton & Ignatius, *supra* note 100, at 27.

¹⁵⁰ See Klein & Orloff, *supra* note 1, at 923.

¹⁵¹ Those who find temporary refuge in shelters are usually required to leave their jobs to avoid the abuser following them to the confidential shelter and jeopardizing all the residents. See Model Comments, *supra* note 121, at 33. In many cases, an abuser will continue to search for and harass his former spouse. See Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273, 280-85 (1995). A recent study found that 56% of women surveyed had been harassed by their abuser at work. This harassment, combined with physical injuries caused by abuse, resulted in many battered women being absent (55%), late for work (62%), or even fired (24%). See M. SHEPARD & E. PENCE, THE AFFECT [sic] OF BATTERING ON THE EMPLOYMENT STATUS OF WOMEN 5 (Feb. 1991). A similar study by the American Insurance Association shows even more alarming figures: 70% of battered women interviewed had been harassed at work; a majority had been late more than five times a month because of abuse and missed work entirely three days a month. See NATIONAL FEDERATION OF BUSI-

skills prevents them from even finding employment. Such situations are further complicated if young children who require constant care are involved. Given these dismal circumstances, the period immediately after leaving an abusive relationship is when many battered immigrant women face an unavoidable need for public assistance.

Despite their dilemma, immigrant women are prohibited from receiving assistance from public benefits programs as a result of changes brought about by the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 ("The Welfare Reform Act").¹⁵² The Welfare Reform Act specifically barred illegal immigrants from federal, state, and local public assistance.¹⁵³ Even more significantly, it rendered legal immigrants ineligible to receive any assistance from most federally funded services, including food stamps and Supplemental Security Income (SSI).¹⁵⁴ States are authorized to determine whether legal immigrants are eligible for a limited number of specified federal programs such as Medicaid.¹⁵⁵ The states are also left to determine the eligibility of both illegal and legal immigrants for state and local public benefits.¹⁵⁶ After the effective

NESS AND PROFESSIONAL WOMEN, STATEMENT SUBMITTED TO THE HEARING ON S.15 BEFORE THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, 102d Cong., 1st Sess. 243 (April 9, 1991) 243, Senate Hearing 102-369, Serial no. J-102-10.

¹⁵² Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁵³ See Welfare Reform Act §§ 401, 411, 110 Stat. 2261-62, 2268-69.

¹⁵⁴ See *id.* § 402, 110 Stat. at 2262-65. The Welfare Reform Act creates exemptions for legal residents who are refugees, veterans, or serving in the armed forces, and those who have worked at least ten years without receiving federal aid. See §§ 402, 412, 110 Stat. 2262-65, 2269-70. Legal immigrants who are currently receiving benefits become ineligible after one year. See § 402, 110 Stat. 2263. The new law took effect on October 1, 1996. About 650,000 legal immigrants no longer have access to Medicaid. An estimated one million legal immigrants, many of them children, are ineligible for food stamps, and roughly 500,000 residents were cut off from SSI targeted to the needy, elderly, blind, and disabled. See William Claiborne, *At a California Clinic, Outbreak of Uncertainty*, WASH. POST, Aug. 26, 1996, at A4. The change will be severely felt in California, which is home to nearly 40% of the approximately 1.5 million permanent residents who receive federal assistance. See *id.* In Los Angeles County, which has the state's highest concentration of immigrants, 200,000 families with children could lose benefits under AFDC if the state exercises its new authority to disqualify legal immigrants from federal-state welfare programs. See *id.* Shortly after the passage of the Welfare Reform Act, California Governor, Pete Wilson, ordered state agencies to stop providing services to illegal immigrants. Wilson's Executive Order includes an array of programs, most notably prenatal care, higher education, and health care outlets. The first area to be hit is the state-funded prenatal care services. The prenatal care program pays for medical care deemed necessary to protect the health of a mother and an unborn infant. California treats about 70,000 undocumented expecting mothers annually. See Mark Katches, *Wilson Limits Aliens' Benefits: State Agencies Ordered to Cut Wide Range of Services to Illegal Immigrants*, L.A. DAILY NEWS, Aug. 28, 1996, at N1.

¹⁵⁵ See Welfare Reform Act § 402, 110 Stat. 2264-65. Other specified federal programs include Temporary Assistance for Needy Families. See *id.*

¹⁵⁶ See *id.* §§ 411, 412, 110 Stat. 2268-70.

date, both legal and illegal immigrants are only eligible for emergency medical care, soup kitchens, and short term non-cash in kind emergency disaster relief.¹⁵⁷

Despite the advances made by VAWA, the coexisting legal framework created even more obstacles for battered immigrant women trying to survive on their own. The onerous provisions of the Welfare Reform Act threatened to undermine the gains that advocates for battered immigrant women have struggled to achieve. Because many battered immigrant women are economically dependent on their abusers, few women have the resources necessary to begin a new life. Public benefits are a key factor in enabling battered immigrant women to leave, and to remain separated from their abusers. Without the minimum support necessary to survive, battered immigrant women will be forced to choose between a life of abuse and a life of poverty. The Welfare Reform Act failed to recognize the plight of domestic violence victims who generally face poverty if they leave their abusers, and who need to work, or, at least, receive public benefits. Without work authorization or access to public benefits, battered immigrant women will be forced to return to their batterers, or to remain trapped in violent, abusive relationships.

C. *Resurgent Xenophobia and The Political Climate In An Election Year*

As already evidenced by the Welfare Reform Act, the difficulties that battered immigrant women face have been exacerbated by conflicting laws that fail to take their situation into account. The protection extended by the legal framework was further threatened by vehement anti-welfare and anti-immigrant sentiment, as reflected by the flurry of restrictive immigration bills that emerged during the 104th Congressional term.¹⁵⁸

On April 26, President Clinton signed the Anti-Terrorism and Effective Death

¹⁵⁷ See *id.* §§ 401, 411, 110 Stat. at 2261-62, 2268. They are also eligible for immunization, Headstart, school lunches and job training. See *id.*

¹⁵⁸ As of March 19, 1995, some 103 bills had been introduced into Congress to tighten immigration laws, or to make English the nation's official language. See Rick Barry, *Immigration Restrictions Supported*, TAMPA TRIB., Mar. 19, 1995. Popular support for substantial immigration reform exists, particularly among residents of border states such as California and Texas, who are increasingly restricting the access of immigrants to their public aid programs. The best known of these initiatives is California's Proposition 187, passed by a 59 to 41 percent margin in 1994. Proposition 187 is a comprehensive statute aimed at denying public social services, including health services, public education, and public assistance. It also requires state employees to participate diligently in the detection and enforcement of these prohibitions against aliens not lawfully in the United States. For discussions of Proposition 187, see 71 INTERPRETER RELEASES No. 32 at 1093 (Aug. 22, 1994) and No. 44 at 1511 (Nov. 14, 1994). The enforcement of Proposition 187 was enjoined almost as quickly as it was passed while litigation proceeds to determine its constitutionality. At least eight federal and state cases were commenced to challenge the statute's legality, among them *League of United Latin American Citizens v. Wilson* and *Gregario T. v. Wilson*. 59 F.3d 1002 (9th Cir. 1995).

Penalty Act of 1996 ("AEDPA")¹⁵⁹ into law. The AEDPA involved legislation that made drastic amendments to immigration laws, and had little to do with protecting the United States from terrorism.¹⁶⁰ AEDPA eliminated certain avenues by which undocumented immigrants can stay in the United States, regardless of their citizen family members or length of residence. As a result, it deprived battered immigrant women of the relief intended by VAWA's suspension of deportation provisions. AEDPA essentially eliminated the availability of suspension of deportation for any non-citizens who entered the country without "inspection"¹⁶¹ by immigration authorities on arrival into the United States.¹⁶² By making all people who entered without inspection "excludable"¹⁶³ rather than deportable, it eliminated suspension of deportation for undocumented immigrants. Suspension of deportation is not available to people in "exclusion" proceedings, since suspension of deportation is only available in a deportation hearing.¹⁶⁴ Instead of a deportation hearing, an undocumented immigrant is subject to exclusion with an expedited exclusion interview.¹⁶⁵ Thus, AEDPA makes undocumented battered women who are in the United States illegally, ineligible for VAWA suspension of deportation and subject to exclusion from the country.

¹⁵⁹ Pub. L. No. 104-132, 110 Stat. 1259.

¹⁶⁰ The passage into law happened as a last minute revision to an otherwise unrelated bill. The authors buried it in the popular legislation long after the House and Senate Committees and sub-committees completed scrutiny. See Paul S. Zoltan, *Anti-Terror Law Creates 'Entry Fiction,'* SAN ANTONIO EXPRESS-NEWS, May 20, 1996.

¹⁶¹ Inspection generally takes place at a point of entry, such as an airport or port, where an immigration officer inspects visas and appropriate documents. See generally 8 C.F.R. §§ 211, 212, 235.1.

¹⁶² See Welfare Reform Act § 414, 110 Stat. 1270.

¹⁶³ If a person is excluded, it means that they are ineligible to receive a visa and cannot enter the United States. See 8 U.S.C. § 1182. Generally, people who are picked up by the INS at airports or on the ocean are usually put into exclusion proceedings; people picked up crossing the border or inside the United States are usually put into deportation proceedings. See Ignatius & Pendleton, *supra* note 100, at 19. Furthermore, under existing administrative interpretation, a person in exclusion proceedings is not eligible for voluntary departure. See Dan Kesselbrenner, *The "Anti-terrorism" Law: New Threats to Immigrants and Increased Challenges for Social Justice Activists*, 23(2) IMMIGR. NEWSL. 1, 6 (Nat'l Immigr. Project of the Nat'l Law. Guild, Boston, MA) June 1996.

¹⁶⁴ See Kesselbrenner, *supra* note 163 at 6.

¹⁶⁵ See *id.* at 1. Although the distinction between exclusion and deportation may be slight, it is enough to reduce constitutional protections for many undocumented immigrants. Immigration provisions in AEDPA restrain an immigrant's procedural or substantive due process of law. Anyone who arrives in the United States without proper documents has not "entered" the country in the eyes of the legal system. Even more interesting is the fact that people already within our borders, who may have been in the United States for years, are deemed to be "seeking entry and admission to the United States." See *id.* Because they have not entered, they have virtually no rights under the United States Constitution. This is known as the "entry fiction" or "legal fiction." See *id.*

Earlier in 1996, another little known provision that undermined the purposes of VAWA passed as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996.¹⁶⁶ The provision barred any kind of assistance by Legal Services Corporations to undocumented immigrants because they are federally funded agencies.¹⁶⁷ The restrictions prohibited Legal Services from using even private funds to represent immigrants who were not legal residents.¹⁶⁸ The provision had terrible ramifications on undocumented women trapped in abusive relationships.¹⁶⁹ Battered undocumented women were prohibited from seeking help from Legal Services to obtain restraining orders, or divorces because of the funding restrictions. These new restrictive provisions seriously threatened and undermined the goal of extending protection to battered immigrant women by discouraging them from taking important steps to protect themselves, and sever ties with their batterers.

V. RECENT DEVELOPMENTS

A. *The Illegal Immigration Reform And Immigrant Responsibility Act of 1996*

The protection offered by the legal framework was further undermined by legislation which threatened to make the most sweeping changes to immigration law in a decade.¹⁷⁰ Congress ultimately passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("the Immigration Reform Act")¹⁷¹ in response to the hostile anti-immigrant and anti-welfare sentiment that surfaced nationwide in an election year.¹⁷² Despite its generally restrictive nature, the Im-

¹⁶⁶ Pub. L. No. 104-134, 110 Stat. 1321.

¹⁶⁷ See generally *id.*

¹⁶⁸ See *id.* See also William Claiborne, *Abused Immigrant Slain After Plea For Legal Services Help Is Denied; New Law Limits Federal Program To Lawful Permanent Residents*, WASH. POST, June 5, 1996, at A3.

¹⁶⁹ The effects of this legislation have already been felt by battered immigrant women and immigrant communities. In a highly publicized incident, Mariella Batista, a Cuban immigrant woman was shot to death by her abusive husband one week after a federally funded Legal Services Corporation rejected her frantic pleas for help in getting a protective order against her husband. See Claiborne, *supra* note 168, at A3.

¹⁷⁰ See generally Janet Hook, *GOP Congress Leaves Broad Impact on U.S. Legislation*, L.A. TIMES, Oct. 1, 1996 at A1; and Eric Schmitt, *Bill Tries to Balance Concerns on Immigration*, N.Y. TIMES, Sept. 28, 1996, at A28.

¹⁷¹ The Illegal Immigration Reform and Immigrant Responsibility Act was passed as part of the Omnibus Appropriations Act of 1997, Pub. L. No. 104-208, 1996 H.R. 3610, Slip Copy (1996). President Clinton signed the Act into law on September 30, 1996.

¹⁷² Immigration legislation had been pending for several years. Previous versions of the Act contained several onerous provisions. One of the most contentious provisions would have allowed states to deny public schooling to children who are in the United States illegally. The Act also contained provisions that would have deported legal immigrants if they relied on benefits for a total of twelve months or more during their first seven years in the United States. These benefits included child care and subsidized housing, which would have adversely affected battered immigrant women. Ultimately, these onerous pro-

migration Reform Act provided several exemptions for battered immigrant women, appearing to have actually considered the critical crossover issues that battered immigrant women face when they leave their batterers.

1. The Public Benefits Ineligibility Exception

The Immigration Reform Act appeared to address the critical issues affecting battered immigrant women's safety and economic status by creating a socialized exception to the public benefits ineligibility provision.¹⁷³ The Immigration Reform Act amended the Welfare Reform Act by expanding the category of "qualified aliens"¹⁷⁴ to include immigrant women who have been battered or subjected to extreme cruelty by a spouse.¹⁷⁵ The exception also requires proof of a "substantial connection" between such battery or cruelty and the need for public benefits.¹⁷⁶ In reality, the exemption does little to help battered immigrant women because of provisions already passed as part of the Welfare Reform Act in August 1996. The Welfare Reform Act previously restricted the eligibility of "qualified aliens" for federal benefits programs.¹⁷⁷ Furthermore, qualified aliens may only receive state and local benefits, and Medicaid, if the states exercise their authority under the Welfare Reform Act to make immigrants eligible for such assistance.¹⁷⁸ Thus, battered immigrant women who are lawfully present in the United States will be eligible for very limited assistance but only *if* the states choose to exercise their option to recognize their eligibility to receive such assistance. Thus, the exemption is extremely limited. It fails to acknowledge that women generally face poverty when they leave abusive relationships, and must be provided with some assistance to enable them to remain separate and independent from abusers.

There is also uncertainty surrounding the requirements that are necessary to meet the battered women exception to public benefits ineligibility. The exception requires proof of a "substantial connection" between the violence and the need for benefits.¹⁷⁹ At this point, it is not clear what will constitute a "substantial connection," but hopefully the INS will promulgate regulations that do not impose onerous evidentiary burdens on battered immigrant women.

visions were dropped from the final version that was rolled into the Omnibus Appropriations Act of 1997. *See generally* Schmitt, *supra* note 170, at A28; and Marc Lacey, *Toned Down Bill on Immigration Passes In House*, L.A. TIMES, Sept. 29, 1996, at A1.

¹⁷³ *See* The Illegal Immigration Reform and Immigrant Responsibility Act § 501 (amending 8 U.S.C. § 1641).

¹⁷⁴ *See id.* (amending 8 U.S.C. § 1641). *See also* Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 § 431, 110 Stat. 2274 (amending 8 U.S.C. § 1641) for the definition of "qualified alien" which includes legal permanent residents.

¹⁷⁵ *See* The Illegal Immigration Reform and Immigrant Responsibility Act § 501.

¹⁷⁶ *See id.*

¹⁷⁷ *See* Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 § 402, 110 Stat. 2262-2265 (amending 8 U.S.C. § 1612).

¹⁷⁸ *See* Welfare Reform Act § 412, 110 Stat. 2269-70 (amending 8 U.S.C. § 1622).

¹⁷⁹ *See* The Illegal Immigration Reform and Immigrant Responsibility Act § 501.

2. Exemptions from "Exclusion"

The Immigration Reform Act also provides an exemption for battered immigrant women who entered the United States without inspection. Under the exemption, a woman's undocumented presence in the country does not necessarily render her inadmissible for entry into the United States.¹⁸⁰ However, the exemption is rather restrictive in the sense that it adds new qualifications for permanent residency. Battered immigrant women who enter the United States without inspection after April 1, 1997, must demonstrate that their entry without inspection was substantially connected to the abuse in order to qualify for lawful permanent residency.¹⁸¹ Abused women who have already entered the United States, or those who enter before April 1, 1997, continue to qualify for lawful permanent residency through VAWA without having to prove a "substantial connection."¹⁸²

The Immigration Reform Act also restored a modified version of the VAWA suspension of deportation provision that was undermined by AEDPA. The Immigration Reform Act contains a special provision for battered women that cancels the "removal"¹⁸³ of undocumented women who meet essentially the same requirements as those under VAWA's suspension of deportation provision.¹⁸⁴ Cancellation of removal is a form of immigration relief where immigration courts waive the grounds of removal. If cancellation is granted, a successful applicant is permitted to adjust his or her status to lawful permanent residency.¹⁸⁵ However, the Immigration Reform Act restricts the number of aliens that the Attorney General may adjust to the status of permanent residency under this provision.¹⁸⁶ According to the Immigration Reform Act, the Attorney General may not cancel the removal and adjust the status of more than four thousand aliens in any fiscal year.¹⁸⁷ Efforts to extend protection to battered immigrant women will be undermined once again if battered immigrant women are denied protection solely because the quota limit has been reached.

3. Change in The Immigration Status of The Batterer

According to the INS interim regulations concerning the self-petitioning provision of VAWA, an abuser's change in immigration status will adversely affect a

¹⁸⁰ See *id.* § 301 (amending 8 U.S.C. § 1182(a)(6)).

¹⁸¹ See *id.*

¹⁸² See *id.*

¹⁸³ Deportation is essentially renamed renewal in the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 1996 H.R. 3610, Slip Copy (1996).

¹⁸⁴ See *id.* at § 304; see discussion *infra* Part II(C)(ii) for VAWA suspension of deportation requirements.

¹⁸⁵ See Leslye E. Orloff et al., *Violence Against Women Act Provisions to Protect Battered Immigrant Women and Children*, (AYUDA, Wash., D.C.), Oct. 9, 1996, at 5.

¹⁸⁶ See The Illegal Immigration Reform and Immigrant Responsibility Act, § 304.

¹⁸⁷ See *id.*

battered immigrant woman's self-petition.¹⁸⁸ If an abusive LPR husband is deported before the approval of a self-petition, the battered immigrant woman's application will be denied since the abuser will lose his LPR status.¹⁸⁹ Both AEDPA and the Immigration Reform Act include strict provisions concerning criminal offenses that have serious consequences for battered immigrant women in this context. AEDPA expands the grounds of deportability, making relief from deportation almost impossible for long term permanent residents who have criminal histories.¹⁹⁰ This catch-all provision includes most felonies and misdemeanors, ranging from any drug offenses, such as marijuana possession, to crimes of moral turpitude and even shoplifting.¹⁹¹ Moreover, AEDPA makes no distinction between the seriousness of crimes, the length of time since the crime was committed, or whether the person served time in prison.¹⁹² If a woman is married to an abuser who is deportable under AEDPA because he may have been convicted of a minor crime in the past, her self-petition will be denied as he no longer has LPR status.

The Immigration Reform Act goes even further, by including provisions that require deportation for domestic violence offenses, stalking, and violations of civil protection orders.¹⁹³ Ironically, the revocation of the batterer's immigration status will serve as a basis for denial of a self-petition. For women, the provisions expanding the grounds of deportability have even more far reaching consequences. Many women will be discouraged from seeking protection orders or from cooperating in criminal prosecutions for fear that it will result in the conviction and subsequent deportation of their LPR husbands. The termination of a husband's lawful permanent residency will ultimately adversely affect the woman's VAWA petitions.¹⁹⁴ Thus, although aimed at sending a message that violence will not be tolerated, the AEDPA and the Immigration Reform Act have, in reality, seriously exacerbated the plight of battered immigrant women.

¹⁸⁸ See Self-Petitioning for Certain Battered or Abused Spouses, 61 Fed. Reg. 13061, 13062 (1996).

¹⁸⁹ See Model Comments, *supra* note 121, at 3.

¹⁹⁰ See Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 435(a), 110 Stat. 1274-75 (amending 8 U.S.C. § 1251(a)(2)(A)(i)(II)); and § 440(e), 110 Stat. 1277-78 (amending 8 U.S.C. § 1101(a)(43)).

¹⁹¹ See *id.* In New York, crimes of moral turpitude include actions such as defacing passports and turnstile jumping. See Lena Williams, *Terrorism Law Boosts INS Detentions, But Does It Go Too Far?*, THE ORANGE COUNTY REG., July 21, 1996, at A17; Patrick J. McDonnell, L.A. TIMES, Jan. 20, 1997, at A1, 20.

¹⁹² See Williams, *supra* note 191, at A17. See generally Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-32, §§ 435, 440, 110 Stat. 1259, 1274-1279 (1996).

¹⁹³ See The Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, § 350, 1996 H.R. 3610, Slip Copy (1996) (amending 8 U.S.C. § 1251(a)(2)).

¹⁹⁴ See Pendleton & Ignatius, *supra* note 100, at 8.

4. Assistance From Legal Services Corporations

On a more positive note, the Immigration Reform Act also amended the Omnibus Consolidated Rescissions and Appropriations Act of 1996 provision that prohibited undocumented women from seeking legal assistance from federally funded Legal Services Corporations.¹⁹⁵ The earlier provision left inexperienced undocumented women with little command of English, stranded to navigate through the complex legal system alone. In an attempt to redress this problem, the Immigration Reform Act created an exemption for battered immigrant women by allowing them to seek related legal assistance from Legal Services Corporations.¹⁹⁶ The exemption will allow undocumented women to seek help from Legal Services to obtain restraining orders, divorces, child support, or to apply for protection under VAWA. Thus, the provision enables battered immigrant women to take positive steps towards leaving abusive situations and gaining independence from their batterers.

5. Affidavits of Support

The Immigration Reform Act also amended requirements concerning the legal obligations of batterers who may have provided signed "affidavits of support" when sponsoring their spouses for immigration into the United States. Before entry into the United States is granted, an alien must prove that he or she is not "likely at anytime to become a public charge."¹⁹⁷ A common way to prove this was for the sponsor-husband to submit an "affidavit of support" stating that he would be financially responsible for her.¹⁹⁸ These provisions created a sponsorship "deeming period" in which the income of the sponsor-husband who submitted the affidavit of support would be "deemed" as part of the sponsored-wife's income.¹⁹⁹ Thus, it was assumed that for this period of time, the sponsored-wife had access to her husband's income.²⁰⁰ The Immigration Reform Act makes these affidavits of support legally enforceable as contracts and allows battered immigrant women to enforce them against their abusive sponsor-husbands.²⁰¹ The remedies available to enforce an affidavit of support include judgment liens, writs of execution, installment payments, and garnishment provisions.²⁰² As a practical matter, however, the remedies to enforce affidavits of

¹⁹⁵ See Pub. L. No. 104-134, § 504, 110 Stat. 1321-59 (1996).

¹⁹⁶ See The Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, § 502, 1996 H.R. 3610, Slip Copy (1996).

¹⁹⁷ Stephen H. Legomsky, *Immigration, Federalism & The Welfare State*, 42 U.C.L.A. L. REV. 1453, 1459 (1995) (citations omitted).

¹⁹⁸ See *id.* at 1459.

¹⁹⁹ Rebecca Clark, *Immigration & Social Policy*, 11 N.Y.L. SCH. J. HUM. RTS. 560, 576 (1994).

²⁰⁰ See *id.* at 576.

²⁰¹ See The Illegal Immigration Reform and Immigrant Responsibility Act § 551 (amending 8 U.S.C. § 1183a).

²⁰² See *id.*

support may prove daunting to immigrant women, overwhelmed by the complexities of an unfamiliar court system.

Although the Immigration Reform Act limited some of the adverse effects of anti-immigrant laws on battered immigrant women, it ultimately did little to extend protections to this group of women. The Immigration Reform Act failed to adequately address the most important crossover issues facing battered immigrant women and their ability to survive on their own. Unless battered immigrant women are given a means by which to support themselves and their children, the purpose of VAWA in extending protection to them will be rendered meaningless. The purpose of VAWA is to prevent battered immigrant women from being trapped in a violent relationship because they are completely dependent on their batterers. The framework will be undermined if it encourages battered immigrant women to leave their batterers but leaves them with no means to support themselves and their children. If these women are unable to make ends meet, they will be forced to return to their abusive husbands.

VI. RECOMMENDATIONS FOR CHANGE

Given the uncertainty and problems that battered immigrant women face, a comprehensive approach must be taken to ensure that serious efforts are made to address these concerns, and ensure continued protection for battered immigrant women. These remaining issues need to be addressed through a multi-faceted approach — through regulations, legislation, community based efforts, and training — in order to respond to the harrowing situation faced by immigrant women who are trapped in violent, abusive relationships.

A. *INS Regulations*

The flurry of immigration laws have created a number of uncertainties; thus, the promulgation of INS regulations concerning the implementation of VAWA and the Immigration Reform Act plays a crucial role in ensuring that the framework of protection is neither undermined nor rendered useless. Regulations could resolve many of these remaining uncertainties.

1. Regulations Implementing VAWA

Final regulations concerning the self-petitioning provision of VAWA need to address the problems surrounding work authorization for immigrant women who are married to LPRs. Under the interim regulations, only VAWA applicants who are married to United States citizens are guaranteed work authorization, while spouses of LPRs must wait for a visa before they can request an adjustment of status and work authorization. The final regulations should provide work authorization to all VAWA self-petitioners who file applications and who meet the self-petitioning requirements. The INS should create a simple unified system which could be used by all VAWA applicants to apply for work authorization simulta-

neously with their self-petition.²⁰³ The INS could process all the applications the same way it processes petitions filed by VAWA applicants who are spouses of United States citizens.²⁰⁴ Swiftly granting work authorization to self-petitioners will ensure that they overcome economic barriers and move quickly to independence. Battered immigrant women must be presented with realistic options that will permit them not only to leave, but to remain separated from their batterers.

The final INS regulations also need to address the problems concerning an abuser's change in immigration status. The regulations should be amended to ensure that battered immigrant women who otherwise qualify for VAWA protection obtain it as long as their abuser-husband is a citizen or LPR at the time they file VAWA self-petitions.²⁰⁵ This will not only protect battered immigrant women whose husbands become deportable because of criminal offenses, but it will also encourage women to cooperate in criminal prosecutions against their batterers. Through VAWA, Congress intended to provide protection to domestic violence victims from the earliest date possible. The final regulations should ensure that battered women remain eligible for VAWA protection even if the batterer's immigration status changes after the filing of a self-petition.

2. Regulations Implementing The Immigration Reform Act

Although the Immigration Reform Act reinstated VAWA suspension of deportation with the cancellation of removal provision, the latter provision must deal with essentially the same concerns as the VAWA provision.²⁰⁶ These concerns must be addressed by the INS when it promulgates regulations implementing the Immigration Reform Act. As cancellation of removal is only available to people in removal proceedings, the regulations must allow battered undocumented women to apply affirmatively for this kind of relief.²⁰⁷ The regulations must ensure that battered immigrant women have a means of survival, and must simultaneously allow them to apply for work authorization.

The regulations must also clarify how to interpret certain terms such as "extreme hardship" and "substantial connection." The phrase "extreme hardship" has acquired a settled meaning in the deportation context which is extremely difficult to meet. The forthcoming regulations must tailor the interpretation to the situation faced by battered immigrant women. Similarly, the INS regulations must also provide some guidance in the interpretation of the phrase "substantial connection" when evaluating the eligibility of battered women for both the public benefits and removal exemptions. The regulations must clarify the kinds of

²⁰³ See Model Comments, *supra* note 121, at 40.

²⁰⁴ See *id.*

²⁰⁵ See *id.* at 4.

²⁰⁶ See discussion *infra* at Part 2(D).

²⁰⁷ A small minority of INS districts will allow individuals to turn themselves into the INS for initiation of removal proceedings to apply for cancellation of removal. However, the process could take over six months in some jurisdictions, and is unavailable altogether in other jurisdictions. See Orloff et al., *supra* note 185, at 5.

evidence that are sufficiently "substantial" to prove a connection between the abuse and the immigrant woman's situation. In light of the difficulties many battered immigrant women may have in gathering evidence to prove a substantial connection,²⁰⁸ the INS must adopt a generous interpretation that is tailored to the plight of battered immigrant women.

B. *Strengthening the Legislative Response at Federal and State Levels*

Legislation must also be passed to continue to extend protection to battered immigrant women. Given the desperate situations that many battered immigrant women face immediately after leaving their batterers, Congress must create a selective exemption restoring public benefits to battered immigrant women. This would allow them to receive assistance from federally funded programs. As the need for public assistance is at its greatest when battered immigrant women leave violent relationships, they must be given a realistic opportunity to start new lives and remain separate and independent from their batterers. Moreover, battered immigrant women's dependence on public assistance is likely to be temporary.²⁰⁹ The need for public assistance often arises directly out of the abusive relationship and the end of the relationship usually signals the beginning of the transition to independence. Moreover, most families who receive AFDC do so for no more than twenty-four months at a time,²¹⁰ while over two-thirds of families headed by women under thirty receive benefits for an even shorter time period.²¹¹ Legislative efforts must recognize that poverty and the use of public benefits are endemic to the experience of domestic violence.

In the alternative, a narrow exemption restoring public benefits to battered immigrant women could alleviate the harsh impacts of the restrictive welfare and immigration laws at the state level, through a narrow exemption restoring public benefits to battered immigrant women. Under the Welfare Reform Act, states are authorized to determine whether legal immigrants are eligible for Medicaid.²¹² The Welfare Reform Act also gives power to the states to provide affirmatively any state or local benefits to both undocumented and legal immigrants.²¹³ States

²⁰⁸ Often, battered women flee quickly and secretly without time to pack, leaving everything behind. See Barbara P. Davidson & Pamela J. Jenkins, *Class Diversity in Shelter Life*, 34 *SOCIAL WORK* 491, 492 (1989).

²⁰⁹ See Elizabeth Ruddick, *Memorandum on Challenging The Public Charge Exclusion*, in *RESOURCES ON NEW RIGHTS FOR BATTERED IMMIGRANTS*, *supra* note 86, at 6.

²¹⁰ See WELFARE LAW CENTER, *TIME LIMITING AFDC: REDUCING AID WITHOUT REDUCING NEED* (1995).

²¹¹ See L.A. Pavetti, "The Dynamics of Welfare and Work: Exploring the Process By Which Women Work Their Way Off Welfare," Ph.D. Dissertation, Harvard University, Malcolm Wiener Center for Social Policy Working Papers: Dissertation Series 29 (1993).

²¹² See Personal Responsibility and Work Opportunity and Reconciliation Act of 1996, Pub. L. No. 104-193, § 402, 110 Stat. 2264-65 (1996).

²¹³ See *id.* at §§ 411, 412, 110 Stat. 2105, 2268-69. States who wish to exercise this authority must enact a state law after the date of enactment of the Personal Responsibility and Work Opportunity and Reconciliation Act, which must affirmatively provide for such

must affirmatively recognize this eligibility by creating an exemption that allows battered immigrant women to receive state and local benefits, as well as Medicaid. Battered immigrant women must be provided with a way to gain financial independence or they will be forced to return to their abusive husbands.

If the federal or state governments create an exemption to allow battered immigrant women access to public benefits, coexisting laws must also be amended to ensure that the purpose of such an exemption is not undermined. Battered immigrant women must not face any danger in receiving public assistance. Under current immigration laws, applying for public benefits may affect the outcome of any pending immigration petition. Applicants for legal immigration status may be denied status if they fall into a category of exclusion, which includes becoming a "public charge."²¹⁴ Thus, even if battered immigrant women have valid claims under VAWA, the INS could find that women who have received certain forms of public assistance, or those who need to receive public assistance will fall into this exclusionary category, which may serve as the basis for denial of their application to regularize their status in the United States.²¹⁵

Current immigration laws also make any immigrant who becomes a public charge within five years after entry deportable unless he or she affirmatively proves that the causes of dependency arose after entry.²¹⁶ Thus, the public charge exclusionary category must also be amended to recognize that battered immigrant women may be forced to rely on public benefits and that such reliance should not affect any pending immigration petitions. The exclusionary category must be amended to ensure that the efforts to provide protection to battered immigrant women are not undermined.

eligibility. *See id.* at § 411(d), 110 Stat. 2269.

²¹⁴ *See* 8 U.S.C. § 1182(a)(4). Other grounds for exclusion include: prostitution, criminal behavior, drug use, drug trafficking, positive tests for tuberculosis or HIV infection, and membership in the communist party. *See generally* 8 U.S.C. § 1182(a).

²¹⁵ *See, e.g., In re Vindman*, 16 I. & N. Dec. 131 (1977) (ruling that refugee parolees were ineligible for adjustment of status because they had not been employed and had received benefit payments); and *In re Harutunian*, 14 I. & N. Dec. 583 (1974) (ruling with the same effect regarding "older alien").

²¹⁶ *See* 8 U.S.C. § 1251(a)(5). In contrast to the public charge exclusion, this deportation ground is rarely invoked; very few lawful LPRs have been deported as public charges. *See also* UNITED STATES DEP'T OF JUSTICE, 1992 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 162 (1992) (compiling statistics showing fewer than six deportations on public charge grounds for each year from 1971-80, two in 1981, zero in 1982). Its mere presence may, however, deter immigrants from seeking public assistance for which they may be eligible. *See also* Legomsky, *supra* note 197, at 1460. Provisions which were ultimately dropped from the Immigration Reform Act would have made legal immigrants deportable for use of more than twelve months of public benefits such as child care and subsidized housing. *See generally* Schmitt, *supra* note 170.

C. Education, Outreach And Training

1. Education and Outreach Throughout the Community

Even if regulations and the law were clarified and strengthened, there are some things that the law does not and, perhaps, cannot do to improve the lives of battered immigrant women. Cultural barriers such as the belief that abuse is acceptable, isolation from family and community, the inability to speak English, and feelings of shame prevent immigrant women from leaving abusive relationships and utilizing battered women's shelters or other social services. These cultural barriers are very important and need to be recognized and addressed in a manner that is sensitive to these differences.

Cultural issues must be addressed from a non-legal standpoint through community based efforts. Education about domestic violence should be accessible to persons of all ethnic, racial, and language minority communities. In immigrant communities, there is often a deeply ingrained resistance to the acknowledgment that domestic violence is a problem. Thus, education and outreach throughout immigrant communities is especially important to promote awareness about the rights and options of immigrant women in domestic violence situations.²¹⁷

One way to overcome the lack of education and ignorance in immigrant communities is to educate immigrants upon arrival to the United States. The INS

²¹⁷ Such efforts have been made easier by provisions of VAWA that established a fund for community projects on domestic violence. Under the "Demonstration Grants For Community Initiatives" section, VAWA authorizes grants to non-profit organizations to "establish projects in local communities involving many sectors of each community to coordinate intervention and prevention of domestic violence." See also 42 U.S.C. § 10418(a); and Jenny Rivera, *The Violence Against Women Act & The Construction of Multiple Consciousness In The Civil Rights and Feminist Movements*, 4 J.L. & POL'Y, 463, 497 (1996). None of the funding is specifically targeted for use by services which assist immigrant women, but some of this funding for shelters and community services could be "earmarked" for services which cater to the needs of immigrant women. See Susan Girardo Roy, *Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women*, 9 GEO. IMMIGR. L.J. 263, 285 (1995). However, given that funding for community programs on domestic violence took significant cuts in Congress appropriations for 1996, this will be a difficult task. Also, in an effort to address the cultural and language barriers faced by immigrant women, VAWA authorized a national toll-free domestic violence hotline with bilingual services, and also provided one million dollars to establish it. See 42 U.S.C. § 10416. The twenty-four hour National Domestic Violence Hotline (1-800-799-SAFE) is currently run by the Texas Council on Family Violence. The hotline provides access to interpreters in 139 languages, as well as TDD Service for the hearing impaired. The hotline may be the only way that some victims will ever know how to find help in their communities. The idea behind the hotline is that it exists not only for victims, but also friends and family who are concerned about someone in an abusive relationship. Among the services the hotline provides, hotline advocates can provide written materials and tell callers about shelters and services in their own areas. See Christy Hoppe & Kathy Lewis, *Anti-Abuse Hotline Gets Its First Call*, DALLAS MORNING NEWS, Feb. 22, 1996, at A21.

should be required to distribute information about domestic violence and its impact on immigrant women.²¹⁸ The law presently requires the INS to inform conditional residents of the joint petition requirements to adjust to permanent residency.²¹⁹ Information about domestic violence could easily be distributed at the same time. Immigrant women should be made aware that laws are different in the United States. They can then make informed choices about their safety and the relative risks of behavior. An immigrant woman should be informed of her rights and responsibilities as a conditional resident upon arrival into the United States, thereby reducing the risk she would believe she is trapped in an abusive situation.²²⁰ Finally, there is an additional advantage to having the INS distribute this information. The INS is able to distribute materials on a more extensive basis than any of the immigrant advocacy groups trying to distribute information with limited funding.²²¹ Translation of these legal rules would further ensure that many of these immigrant women understand the law and the range of available options if they are involved in a violent, abusive relationship.²²²

Information about domestic violence could also be disseminated through the distribution of pamphlets in places likely to reach battered immigrant women; such as English-as-a-second-language classes, places of worship, ethnic festivals, and local community shops.²²³ Pamphlets could also be available at public places which are likely to involve interaction with the general public such as cultural centers, hospitals, schools and educational facilities, legal services centers, immigrant organizations, and community organizations.²²⁴

In addition to such outlets, information about domestic violence can also be disseminated through public awareness campaigns using media outlets and the popular culture. Television and radio stations could broadcast public affairs talk shows, programs and even public service announcements that include information about domestic violence, local support services, and shelters.²²⁵ Such programming could be particularly effective if aired on television and radio stations

²¹⁸ See Anderson, *supra* note 15, at 1425.

²¹⁹ See 8 C.F.R. § 216.2.

²²⁰ See Anderson, *supra* note 15, at 1425.

²²¹ See *id.* at 1425-26.

²²² See *id.* at 1425 n.139. Measures taken by various states around the country may make translation of such information difficult. As part of an effort to make English the official language, various states have passed laws barring government workers from speaking languages other than English on the job. This prevents shelters and community services from giving vital information to non English speakers who seek help from agencies. The fate of such efforts may turn on a case that will be argued before the Supreme Court as part of its 1996-97 docket. See *Yniguez v. Arizonans for Official English*, 69 F.3d 920 (9th Cir. 1995), *cert granted sub. nom.* *Arizonans for Official English v. Arizona*, 116 S. Ct. 1316 (1996).

²²³ See Felicia E. Franco, *Unconditional Safety For Conditional Immigrant Women*, 11 BERKELEY WOMEN'S L.J. 99, 135 (1996).

²²⁴ See Anderson, *supra* note 15, at 1425

²²⁵ See Franco, *supra* note 223, at 135.

that broadcast in different languages.²²⁶ The popular culture serves as an important outlet that is guaranteed to reach a greater number of people. Such widespread efforts may also educate friends and family who may serve as an additional source of support for battered immigrant women.²²⁷

The language barriers faced by battered immigrant women when seeking help from the legal system or from agencies must also be addressed. Often, the inability to communicate effectively is the most significant barrier faced by non-English speaking parents and children who seek help from the legal system.²²⁸ Reliance on unskilled interpreters, friends, and family members can be both ineffective and dangerous.²²⁹ Thus, in all jurisdictions, the courts,²³⁰ police, hospitals, social service agencies, mental-health centers, and therapists need to enlarge their pool of translators to provide assistance to non-English speaking communities.²³¹

2. *Training for Professionals Involved With Domestic Violence*

It is essential that all persons who come into contact with victims of domestic violence receive some sort of domestic violence training. Training efforts aimed at professionals, such as lawyers, judges, and police officers,²³² who come into

²²⁶ For instance, broadcasting on spanish-language television stations such as Univision or Telemundo would reach a significant number of Latina immigrants, given the popular addiction to Latin American soap operas. See Franco, *supra* note 223, at 135. It is estimated that 74% of Latino households watch Univision. See Ray Rodriguez *Leads Univision To New Heights*, BROADCASTING & CABLE, Jan. 9, 1995, at 40. Information could also be broadcast on some of the 420 Spanish-language AM/FM stations in the United States. See Donna Petrozello, *Spanish Radio Coming Into Its Own*, BROADCASTING & CABLE, Jan. 9, 1995, at 40.

²²⁷ See Franco, *supra* note 223, at 135.

²²⁸ See HOWARD DAVIDSON, AMERICAN BAR ASSOCIATION, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION 19-20 (1994).

²²⁹ See *id.* at 20.

²³⁰ California is an example of a state that is attempting to address the problem of non-English speaking parties in the court system. Under existing law in California, any witness who is incapable of speaking or understanding English will be provided with an interpreter. See CAL. EVID. CODE § 752(a) (West 1995). Existing law also provides that a defendant in a criminal trial who does not understand English has the right to an interpreter during the entire proceedings. See CAL. CONST. Art. I, § 14; see also CAL. GOV'T CODE § 26806(a) (West 1988). California recently enacted Chapter 888 into the Evidence Code in response to the large number of family law actions being brought by non-English speaking parties appearing without the aid of counsel. See CAL. EVID. CODE § 755 SB 982; 1995 Stat. Ch. 888. Chapter 888 provides that in proceedings concerning domestic violence, any party who does not speak or understand English may be appointed an interpreter to assist with communication between the party and the party's counsel. See CAL. EVID. CODE § 755(a) (West 1995).

²³¹ See DAVIDSON, *supra* note 228, at 19-20.

²³² For example, in California, mandatory training programs on domestic violence for

contact with domestic violence victims should include a multi-cultural component focusing on culturally appropriate responses to family violence for all sizeable minority and language minority populations in the community served by those professionals.²³³ This will enable these professionals to craft legal relief that will be effective in preventing violence, while at the same time recognizing that cultural differences exist.

Training on domestic violence is also necessary for the judiciary since the judiciary sets the tone in the courtroom and makes the most critical decisions affecting the cases and the lives of battered immigrant women and their batterers.²³⁴ If the judiciary fails to see the necessity in taking strong action when a domestic violence case comes to court, the violence has the potential to escalate with major costs to the individual, her children, and society.²³⁵ Without training on the special nature of domestic violence in relationships, even the most well-intentioned judge may misunderstand testimony and miss important cues that give credibility to evidence in domestic violence cases.²³⁶ This is particularly important since many self-petitioners will not be represented, or may be assisted by domestic violence shelter workers untrained in immigration laws.

It is also crucial for the INS to receive domestic violence training, as it is primarily responsible for implementing VAWA provisions that provide protection to battered immigrant women.²³⁷ INS officers and adjudicators should be required to acknowledge, identify, and address the specific nature of domestic violence, while also becoming familiar with how domestic violence dynamics, power, and control affect victims, perpetrators, and child witnesses of abuse.²³⁸ The INS should make all possible efforts to ensure that its procedures and interviews are

law enforcement personnel has resulted in better handling of cases. The California Attorney General states: "A change in law enforcement procedures for dealing with domestic violence incidents accounted for the sharp increase in the assault arrest rate." BUREAU OF CRIMINAL STATISTICS, CALIFORNIA DEP'T OF JUSTICE, CRIME AND DELINQUENCY IN CALIFORNIA 40 (1986). Such training programs could include a multi-cultural component that touches on cultural differences and domestic violence in immigrant communities.

²³³ See Davidson, *supra* note 228, at 19-20.

²³⁴ See Model Comments, *supra* note 121, at 46; VAWA includes provisions for grants to educate and train judges and court personnel that includes consideration of racial, ethnic or religious factors. See 42 U.S.C. §§ 13991-94, 14001-02.

²³⁵ See Lynn Hecht Schafran, *There's No Accounting For Judges*, 58 ALB. L. REV. 1075 (1995).

²³⁶ See *id.* at 1072-73. The need for clear direction and training is illustrated in a recent Board of Immigration Appeals case in which an immigration judge's ruling deporting a VAWA suspension applicant was overturned for the judge's failure to take evidence of domestic violence and use of stereotyped notions about women and domestic violence that influenced his decision. This case illustrates that a sophisticated educated person in a high level position can have grave misconceptions about domestic abuse and its consequences. See *In Re Francelia Carolina Gomez Rivera*, File A 70 922 256 (B.I.A., April 23, 1996).

²³⁷ See Model Comments, *supra* note 121, at 45.

²³⁸ See *id.*

carried out in a manner that will not re-traumatize the victim.²³⁹ Enhancing the INS' understanding of the dynamics of domestic violence will ensure that VAWA cases are determined in a manner that is in accordance with the goals of VAWA.²⁴⁰ INS officers who adjudicate self-petitions for battered women must be sensitive to the impact and consequences of violence on applicants, including spousal abuse and sexual assault.²⁴¹ It is important that adjudicators are aware of the victim's trauma, and of the obstacles that prevent battered immigrant women from seeking assistance. These obstacles include cultural and language barriers, lack of understanding of the legal process, and the effect of domestic violence on an abuse victim's self-confidence, ability to testify, and independence.²⁴² These barriers often hinder the victim's ability to verbalize the full impact of the abuse that they have suffered. Thus, the INS should develop a corps of specially trained examiners and adjudicators who will adjudicate all domestic violence related filings, self-petitions, battered spouse waivers, and work authorization requests.²⁴³ A specialized corps of examiners would develop expertise in recognizing domestic violence and be trained to handle the related matters in a sensitive and appropriate manner.²⁴⁴

Services and shelters also need to accommodate the varied cultural, ethnic, and religious backgrounds of domestic violence victims and should be especially sensitive to communication barriers.²⁴⁵ In an age of increasing government cut-backs and dwindling funding; the system's maintenance, but not its expansion, is realistically possible. Many shelters and agencies have severely strained resources and it may not always be possible to accommodate every cultural need. However, if funding is not to come from federal sources, it may be possible to obtain financial and educational support from within targeted communities themselves. Efforts have been made to develop shelters and support groups targeted specifically at immigrant women.

Various organizations around the country have begun catering to the unique needs of immigrant and minority women. Such organizations include AYUDA in Washington, D.C. for Latina women, the Asian Pacific Island Family Safety Center in Seattle, The Center for the Pacific Asian Family in Los Angeles, and Sakhi, catering to the South Asian population in New York.²⁴⁶ Even women's or-

²³⁹ See *id.* Battering and extreme cruelty result in physical, mental and emotional health problems for victims. Women who have been severely assaulted report suffering four times the rate of depression as other women; they attempted suicide five and a half times more often. See Murray Straus & Richard Gelles, *Physical Violence in American Families: Risk Factors and Adaptations to Violence*, 8(145) FAMILIES 426 (1990).

²⁴⁰ See Model Comments, *supra* note 121, at 46.

²⁴¹ See *id.*

²⁴² See *id.*

²⁴³ See *id.*

²⁴⁴ See *id.*

²⁴⁵ See Pressman, *supra* note 12, at 136 n.49.

²⁴⁶ See generally Franco, *supra* note 223; see also Roy, *supra* note 217, at 286-87. These organizations seek to educate and provide assistance to local immigrant communi-

ganizations that do not specifically cater to immigrant communities are developing programs that make them more accessible to immigrant women.²⁴⁷ Finally, organizations that serve the general immigrant community as a whole have also begun to reach out to battered immigrant women as support groups.²⁴⁸

VII. CONCLUSION

As the issue of domestic violence has begun to receive more attention in the United States, the special problems faced by battered immigrant women have started to receive attention and recognition. However, a piece-meal approach to the difficulties faced by battered immigrant women will not alleviate the problem of domestic violence. A comprehensive framework that addresses the plight of battered immigrant women through regulations, legislation, and community based efforts is urgently needed.

The statutory and regulatory framework that has emerged reflects a comprehensive federal response to domestic violence. The Violence Against Women Act made many advances, closing many of the gaps left by IMFA, the 1990 Immigration Act and subsequent INS regulations. For many battered immigrant women, the framework goes a long way to help them escape their lives of abuse. While many uncertainties and ambiguities remain, this framework is still a significant improvement. However, these efforts suffered some serious setbacks. The backlash against welfare and immigrants, as reflected by the passage of AEDPA, the Welfare Reform Act, and the Immigration Reform Act, cannot be allowed to obscure the predicament that battered immigrant women face.

Protections for battered immigrant women need to be extended further so as to provide more than a glimmer of hope to battered immigrant women. The protections allow battered immigrant women to remain legally in the United States, but conflicting laws continue to threaten their means of achieving financial independence and remaining separate from their batterers. Battered immigrant women cannot be penalized for taking the necessary steps for immediate survival. There needs to be a coexisting legal framework that effectively addresses the economic realities and consequences that immigrant women are confronted with

ties about domestic violence. See K. Connie Kang, *Forum To Focus On Spouse Abuse Among Asians Conference*, L.A. TIMES, Aug. 27, 1994, at A3.

²⁴⁷ The D.C. Rape Crisis Center which has had a special community organizer on staff for several years, has within the last year added a special language rape hotline. See Telephone Interview with Gina Cattalini, Volunteer at the D.C. Rape Crisis Center, Dec. 1, 1994 (cited in Roy, *supra* note 217, at 287).

²⁴⁸ Groups such as Mujeres Unidas y Activas in San Francisco, formed with assistance from the Immigrant Women's Task Force, designed to organize Latinas around issues ranging from domestic violence to health services and employment opportunities have been successful in reaching out to battered immigrant women. See Roy, *supra* note 217, at 287. Other successful immigrant groups include Northwest Immigrants Rights Project, and New Beginnings in Oregon. See Christine Whalen & Marsha King, *Abuse in a New Land — Immigrant Wives Often Isolated, Vulnerable*, SEATTLE TIMES, Aug. 8, 1994, at A1.

when they leave abusive marriages. The different racial, cultural, economic, and linguistic realities of immigrant women cannot be ignored. Any solutions need to take such concerns into account, acknowledging that these are factors which shape a battered immigrant woman's assessment of her options.

The alarming proportions that domestic violence has reached in the United States requires an evolving process of legislative, regulatory, and community-based responses to ensure full protection for an especially vulnerable group of domestic violence victims — battered immigrant women. Such a comprehensive framework will ensure that battered immigrant women have the opportunity to remain in the United States. More importantly, this framework will ensure that battered immigrant women have the option to work, survive, and live in safety.

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